

## **Standing Committee on Copyright and Related Rights**

**Thirty-Fifth Session**  
**Geneva, November 13 to 17, 2017**

DRAFT REPORT

*prepared by the Secretariat*

1. The Standing Committee on Copyright and Related Rights (hereinafter referred to as the “Committee”, or the “SCCR”) held its thirty-fifth session in Geneva, from November 13 to 17, 2017.
2. The following Member States of the World Intellectual Property Organization (WIPO) and/or members of the Bern Union for the Protection of Literary and Artistic Works were represented in the meeting: Algeria, Argentina, Armenia, Australia, Austria, Bahamas, Barbados, Belarus, Benin, Bhutan, Botswana, Brazil, Burkina Faso, Burundi, Cameroon, Canada, Chile, China, Colombia, Costa Rica, Côte d'Ivoire, Croatia, Cyprus, Czech Republic, Denmark, Djibouti, Ecuador, Egypt, Estonia, Finland, France, Gabon, Georgia, Germany, Ghana, Greece, Guatemala, Haiti, Holy See, Honduras, Hungary, India, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kenya, Kuwait, Lao People's Democratic Republic, Latvia, Lebanon, Lithuania, Malawi, Malaysia, Mali, Morocco, Mauritania, Mexico, Monaco, Myanmar, Nepal, Netherlands, New Zealand, Nigeria, Oman, Pakistan, Panama, Philippines, Poland, Portugal, Republic of Korea, Republic of Moldova, Russian Federation, Saudi Arabia, Senegal, Seychelles, Singapore, Slovakia, South Africa, Spain, Switzerland, Thailand, Trinidad And Tobago, Tunisia, Turkey, Turkmenistan, Uganda, Ukraine, United Arab Emirates, United Kingdom, United States of America, Uruguay, Uzbekistan, Venezuela (Bolivarian Republic of), Viet Nam and Zimbabwe (101).
3. The European Union (EU) participated in the meeting in a member capacity.
4. The following Intergovernmental Organizations (IGOs) took part in the meeting in an observer capacity: African Regional Intellectual Property Organization (ARIPO), African Union (AU), League of Arab States (LAS), *Organisation Internationale de la Francophonie* (OIF), Organization of Islamic Cooperation (OIC), South Centre (SC) and World Trade Organization (WTO) (7).
5. The following non-governmental organizations (NGOs) took part in the meeting in an observer capacity: African Library and Information Associations and Institutions (AfLIA), *Agence pour la protection des programmes* (APP), *Alianza de Radiodifusores Iberoamericanos para la Propiedad Intelectual* (ARIPI), American Bar Association (ABA), Archives and Records Association (ARA), *Asociación Argentina de Intérpretes* (AADI), Association for the International Collective Management of Audiovisual Works (AGICOA), Association of European Performers' Organizations (AEPO-ARTIS), Association of Commercial Television in Europe (ACT), European Law Students' Association (ELSA), International Association of Broadcasting (IAB), International Association of Scientific Technical and Medical Publishers (STM), International Association for the Protection of Intellectual Property (AIPPI), International Society for the Development of Intellectual Property (ADALPI), International Literary and Artistic Association (ALAI), World Association of Newspapers (WAN), Canadian Copyright Institute (CCI), Canadian Museums Association (CMA), Central and Eastern European Copyright Alliance (CEECA), Copyright Research and Information Center (CRIC), Center for Information Policy Research, Centre for International Intellectual Property Studies (CEIPI), Centre for Internet and Society (CIS), International Center for Trade and Sustainable Development (ICTSD), Chamber of Commerce and Industry of the Russian Federation (CCIRF), Civil Society Coalition (CSC), Actors, Interpreting Artists Committee (CSAI), Communia, International Confederation of Music Publishers (ICMP), International Confederation of Societies of Authors and Composers (CISAC), British Copyright Council (BCC), European Publishers Council (EPC), International Council on Archives (ICA), *Corporación Latinoamericana de Investigación de la Propiedad Intelectual para el Desarrollo* (Corporación Innovarte), Creative Commons Corporation, Daisy Consortium (DAISY), Digital Video Broadcasting (DVB), Electronic Frontier Foundation (EFF), Electronic Information for Libraries (eIFL.net), European Bureau of Library, Information and Documentation Associations (EBLIDA), European Visual Artists (EVA), *Fédération européenne des sociétés de gestion collective de producteurs pour la copie privée*

*audiovisuelle* (EUROCOPYA), Ibero-Latin-American Federation of Performers (FILAIÉ), Instituto de Derecho de Autor (Instituto Autor), International Video Federation (IVF), International Federation of the Phonographic Industry (IFPI), International Federation of Actors (FIA), International Federation of Library Associations and Institutions (IFLA), International Federation of Film Producers Associations (FIAPF), International Federation of Journalists (IFJ), International Federation of Musicians (FIM), International Federation of Reproduction Rights Organizations (IFRRO), German Library Association, Independent Film and Television Alliance (I.F.T.A), International Authors Forum (IAF), International Council of Museums (ICOM), Karisma Foundation, Knowledge Ecology International, Inc. (KEI), *Latín Artis*, Library Copyright Alliance (LCA), Max-Planck Institute for Intellectual Property and Competition Law (MPI), Motion Picture Association (MPA), Canadian Museum of History (CMH), Program on Information Justice and Intellectual Property (PIJIP), North American Broadcasters Association (NABA), Scottish Council on Archives (SCA), Society of American Archivists (SAA), The Japan Commercial Broadcasters Association (JBA), Third World Network (TWN), European Broadcasting Union (EBU), International Publishers Association (IPA), Asia-Pacific Broadcasting Union (ABU), World Blind Union (WBU), Union Network International - Media and Entertainment (UNI-MEI) (75).

### **AGENDA ITEM 1: OPENING OF THE SESSION**

6. The Chair welcomed the delegations to the thirty-fifth session of the SCCR and invited WIPO's Director General to give his opening remarks.

7. The Director General observed that the Committee had a rich agenda for the session, and made brief remarks on some of the items that would be discussed. Beginning with broadcasting, he observed that while it was a difficult topic, symbolically, it was extremely important that the Committee saw progress on that agenda item. Across the United Nations system it had been observed that multilateralism was under some degree of a threat. It had been extremely difficult to get movement in the normative area in any of the multilateral organizations. The Committee could discuss the various driving forces behind that for hours. However, it was necessary for them to put their heads together and see how they could show that advancement and progress was possible on a multilateral normative agenda. It was also the case that broadcasting was an area that was right at the frontier of the development of technologies. WIPO was an organization that sought to promote innovation and creativity through an effective, balanced, Intellectual Property (IP) system. It was important that the Committee be able to show that it was capable of dealing with those issues in the 20 years or so that it had been considering the agenda item on broadcasting. Of course, they were aware that there had been extraordinary changes in the technological basis of broadcasting. Those changes had brought positive developments in the content available through broadcasting. In that time, those changes had also brought a lot of innovation in piracy, of which they were equally aware. Those developments, and those in the area of piracy, threatened much of the benefit that had been achieved through the development of innovative business models for broadcasting. It was an area where the Committee had arrived at an important point in its discussions. The Director General stressed that the Member States should not be formalistic about those discussion. As they were aware, the Committee had a mandate. However, a mandate was simply the expression of what the Member States wished to get done. That mandate was just about 10 years old. As there had been movement in the technological basis of broadcasting, and as there had been movement in the technologies of piracy, one might expect that the Committee looked at the mandate and decided what was most appropriate. It may be the same mandate or a different mandate, but the Committee should decide what was the appropriate way to go forward. It was not a formal question because the mandate was simply the latest expression that any Member State gave to a particular area of work. The Director General hoped that they would make progress on that important issue. There was also limitations and exceptions, and there again, the Committee needed to demonstrate how they

could go forward with solutions. Those items had been under discussion for a long time. They had been in a number of extremely rich, important studies that had been discussed by the Committee and would be discussed by the Committee. Looking for concrete results in that area was also exceptionally important. There was also two, new, emerging issues that had been proposed by various Member States. On one hand, there was the initiative put forward by the Group of Latin American and Caribbean Countries (GRULAC), with respect to the digital environment. It was an extremely important initiative and area of work for the world. There was also the proposal put together by Senegal and Congo, on protecting the resale right of artists. Compared to the formal proposal which had been previously mentioned, it was a reasonably narrow issue, but it was nevertheless extremely important because at the end of the day, whatever the business model, at the base it was an artist or creator that they should pay attention to protecting. The Committee had an extremely important set of issues before it. The Director General wished the Member States all the best in their deliberations under the very able leadership of the Chair.

## **AGENDA ITEM 2: ADOPTION OF THE AGENDA OF THE THIRTY-FIFTH SESSION**

8. The Chair stated that the work of the Committee and mandate that had been given to them, gave them a chance to have an impact on many of their fellow citizens, who came in contact with copyright and related rights on daily basis, in the way they worked, lived and played. It gave them a chance to make an impact on the many industries whose business models were being impacted by technology. Many industries were linked to associations or groups on their own. The Committee welcomed the chance to engage with them to see how it could move in a way that would support their role and impact in society. With the help of the Secretariat, the Chair and Vice-Chairs had conducted the proceedings as a member-driven process in an open, transparent manner, with a view of efficiently moving the issues along towards consensus. The Committee had worked in that manner for a long time. Along with his Vice-Chairs, he was very keen to continue that process. In the 5 days ahead, he hoped that the Committee would have excellent discussions, chances to engage and opportunities to work with each other. He looked forward to fruitful, constructive discussions in the days ahead. Moving to the second agenda item, which was the adoption of the Agenda, he noted that earlier, the Secretariat had circulated the Draft Agenda, with respect to the scope of the Committee's work that week. It had been proposed that the Committee would continue to work on all subjects of the Draft Agenda. The discussions would be based on all working documents considered by the Committee during the thirty-fourth session of the SCCR, held in May 2017, and all other documents and proposals submitted for those discussions. As to the work of the Committee, the proposal was to discuss the protection of broadcasting organizations that morning, and procedural matters the following evening, before moving to limitations and exceptions, which would be discussed from Wednesday morning to the end of the evening. The Secretariat had circulated a number of draft action plans, on which they had received input. Those would be discussed on Wednesday. The Committee would then discuss the scoping study on copyright in the digital environment and the resale royalty right on Friday morning, with other matters continuing Friday afternoon before the review of the Chair's summary. The Secretariat had sent a schedule for the week to the group coordinators. The Chair requested that the Secretariat reviewed that schedule in light of the modifications that had been proposed. He would be meeting with the regional group coordinators during the lunch break. He suggested that they take up any discussion regarding the allocation of time for agenda items at that meeting. He requested that the Secretariat read the schedule.

9. The Secretariat noted the proposed allocation of time for the meeting quite closely followed the allocation of time in the previous meeting. The proposal for that morning was to have the opening of the session, administrative agenda items and opening statements from regional groups on the meeting as a whole, followed immediately by the discussions on the protection of broadcasting organizations, with statements from Member States and NGOs, followed by morning by an informal meeting, if there was time. The proposal would then be to continue such informals in the afternoon. Tuesday, once again, the topic would be the protection of broadcasting organizations, with discussion in informals, checking in the plenary and concluding in plenary.

10. The Chair inquired if there were any comments on the draft schedule. With no additional comments or objections, the Committee approved the draft agenda.

### **AGENDA ITEM 3: ACCREDITATION OF NEW NON-GOVERNMENTAL ORGANIZATIONS**

11. The Chair moved on to Agenda Item 3, the accreditation of new non-governmental organizations. The Secretariat had received many requests, which could be found in document SCCR/35/2 Rev. He invited the Committee to approve the accreditation of the two NGOs referred to in that document in its sessions, namely, the Center for Information Policy Research and the Canadian Museums Association. With no objections or comments from the Member States the Committee approved their accreditation.

### **AGENDA ITEM 4: ADOPTION OF THE REPORT OF THE THIRTY-FOURTH SESSION OF THE SCCR**

12. The Chair opened Agenda Item 4, the adoption of the report of the thirty-fourth session of the SCCR. Delegations were invited to send any comments or corrections to the English version, which was available online, to the Secretariat, via email at [copyright.mail@wipo.int](mailto:copyright.mail@wipo.int). The comments should be sent in a timely fashion, in order to allow the production of the report before the following session. The Committee was invited to approve the Draft Report, document SCCR/34/7 PROV. The Committee adopted the document. The Chair then invited the Secretariat to inform the delegates about the side events that week and to make other announcements.

13. The Secretariat informed the Committee that during that week there would be three side events. The following day at lunchtime there would be a panel discussion on Digital Limitations and Exceptions for Copyright, sponsored by the Brazilian Delegation and American University's Washington College of Law. On Wednesday, there would be two side events organized by International Federation of Actors (FIA). The first was a lunchtime panel discussion on copyright implications for Nollywood film productions. In the evening there would be a reception just after the meeting, followed by the screening of the film, the CEO, a Nollywood production. The screening would be followed by a question and answer session with the director. More details on the events would be provided the following day and on Wednesday.

### **OPENING STATEMENTS**

14. The Chair opened the floor for general statements by group coordinators.

15. The Delegation of Indonesia speaking on behalf of the Asia and Pacific Group affirmed its support of the agenda and the work program for the session, which reflected a more balanced treatment of all issues facing the Committee. The SCCR was important to WIPO in dealing with the protection of broadcasting organizations, limitations and exceptions for libraries and archives and limitations and exceptions for educational and research institutions and for

persons with other disabilities. Those three issues were of great importance to the Asia and Pacific Group. Following the discussions in the Committee since the twenty-seventh session, it would not be wrong to say that they were facing difficulty in finding agreement on continuing work on each of the three important agenda items. In order to further their work, they should refer to the 2012 General Assembly guidance to the SCCR, on the work plan on those three issues. The Asia Pacific Group recognized the emergence of new, important issues as well, such as copyright in the digital environment. It thanked the Secretariat for the scoping study on the digital environment between 2000 and 2016. It looked forward to learning more about that scoping study in national frameworks in the past ten years. It also looked forward to the presentation of the scoping study, as well as the presentation regarding the resale royalty rights. Members of the group would make interventions in their national capacity under that agenda item and would proactively participate in the discussion on that topic. The broadcasting treaty and how rights applied to broadcasting was an issue that required careful balancing. Members of the Asia and Pacific Group would like to see the finalization of a balanced treaty on the protection of broadcasting organizations based on the mandate of the 2007 General Assembly, approached in the traditional sense. For the Delegation, exceptions and limitations were of critical importance for individuals and the collective development of societies. In order to advance and promote culture, science and education, a balanced copyright system was necessary that did not only take the commercial interests of right holders into account, but also considered the larger public benefit, by enhancing public access to the work. The attainment of access to knowledge and entertainment to all was important and that was often hampered by a lack of access to relevant educational and research material. The Asia and Pacific Group thanked those providing presentations and looked forward to the scoping study on the access to copyright protected work for persons with disabilities. It looked forward to all the presentations. It took note of the notable progress that had been made in the discussions on all subjects on exceptions and limitations for library and archives. The outcome of the discussions had been reflected in the Chair's Informal Chart on Limitation and Exceptions for Libraries and Archives, document SCCR/34/5. It welcomed the updated study and the additional analysis of the study on educational activity and believed that the same study, along with the Chair's Informal Chart on Limitations and Exceptions for Persons with Other Disabilities, document SCCR/34/6, provided pertinent views on those topics. It conveyed its appreciation to the Secretariat for having prepared the draft action plans for library and archives and museums, and persons with other disabilities. The draft action plans were a good basis for further consideration in the Committee, to make progress on those very important issues. The Asia and Pacific Group reaffirmed its commitment to remain constructively engaged in the discussion on the draft action plans. It hoped that all member states engaged constructively during the session on the issue of exceptions and limitations based on previous discussions and new inputs, so that they would be able to continue to make progress on that issue. It reminded the Chair that the SCCR was the same Committee that concluded treaties achieved through the constructive engagement of all Member States. It was optimistic they could make further progress and arrive at meaningful outcomes by employing the same spirit of constructivism.

16. The Delegation of Switzerland speaking on behalf of Group B stated that it continued to attach importance to the negotiation of a treaty for the protection of broadcasting organizations. If that treaty was to sustain its relevance, they had the responsibility to take into account the voices of the real world and to respond to technological developments in various fields. The significant economic value of broadcasting, and the appropriate protection of such value was an important consideration for the organization. In that regard, as Member States, they should work towards a solution, which fitted in the current environment, without letting their solutions become outdated before they had effect. At the same time, they stressed the importance of remaining faithful to the mandate of the 2007 WIPO General Assembly, which conditioned the convening of a Diplomatic Conference, on the SCCR reaching agreement on the objectives, object of protection and specific scope of the treaty. It was only Member States that could agree on practical, meaningful solutions, and maintain the relevancy of the Committee and the organization. They noted with appreciation the efforts that had been made to adapt the Revised Consolidated Text on Definitions, Object of Protection, Rights to be Granted and other Issues, document SCCR/34/4. Part A of that document was an acceptable basis for further discussion on remaining issues, definitions, object of protection and rights, as well as on the other issues. However, in all areas there was more work to be done to maximize the chances that the treaty would find success. Group B trusted that the discussions would be further elaborated under the Chair's able-chairmanship, and through the valuable contributions from all participants in the Committee. Turning to limitations and exceptions, it hoped that they could find a consensual basis for further work in the Committee. It appreciated that the aim of their discussions had been to reach a better understanding of the topics, as regards the working methods. It took note of documents SCCR/34/5 and SCCR/34/6, containing the Chair's informal charts, and was ready to continue discussions from the previous meetings, to explore common ground upon which they could stand. It underlined that the Committee should give serious consideration to the objectives and principles as proposed in documents SCCR/26/8 and SCCR/27/8, which offered a basis for common ground, in the case that no consensus could be reached within the Committee. It took note of the Secretariat's proposal for draft action plans regarding limitations and exceptions, which was only sent in the previous week. It would need time to consider the content and form. The Chair could stand assured that he could count on Group B's continued commitment to constructive engagement in the Committee's work.

17. The Delegation of Georgia, speaking on behalf of the Group of Central European and Baltic States (CEBS) restated the longstanding position that it was committed to working towards the convening of a diplomatic conference, on the adoption of a treaty for the protection of broadcasting organizations, which would produce a meaningful outcome. It favored the approach of working out a treaty that would take into account different types of broadcasting developed through rapidly evolving technologies. In order to ensure the effective protection of broadcasting organizations, necessary elements had to be integrated to create future provisions. It looked forward to the progress on developing an effective legal instrument and favored the approach, which equally protected any transmissions of broadcasting organizations over any medium. As already stated in the previous SCCR sessions, the CEBS Group recognized the importance of limitations and exceptions for libraries and archives, as well as for educational and research institutions and persons with other disabilities. It was not in a position to lend its support to work on an international legal instrument in that area. However, the different approaches adopted by Member States, including explanations of best practices, and the studies presented to the Committee during the previous sessions, could direct the Committee's work regarding guidance on national implementation of the international treaties. It looked forward to sharing best practices of different national approaches. It took note of the draft action plans for limitations and exceptions prepared by the Secretariat. However, it needed more time to analyze them. Additionally, the Group was ready to be engaged in discussions on the proposal put forward by the delegations of Senegal and Congo on resale rights included in the Agenda. Finally, CEBS reassured the Chair of its constructive engagement in all the discussions during the SCCR session.

18. The Delegation of Costa Rica speaking on behalf of GRULAC emphasized the importance of the timely publication of all the official documents for each session, and with due prior notice, so that they could evaluate them. For GRULAC, the SCCR's work was of the greatest importance. It had always advocated a well-balanced program of work on the protection of broadcasting organizations, limitations and exceptions for libraries and archives and limitations and exceptions for teaching and research institutions and for people with other disabilities, as well as the GRULAC proposal on copyright related to the digital environment. It hoped to tackle all of these questions through balanced discussions, respecting the interests and priorities of all Member States. Exceptions and limitations was one of the most important outcomes, the entry into force of the Marrakech Treaty had been promoted by the region and they remained attentive to all the work to implement that treaty. GRULAC reiterated its willingness to continue discussions on the protection of broadcasting organizations, so as to update their protection, following the signal-based approach. It hoped to continue the discussions on document SCCR/34/4, resulting from the Committee's previous session. In any case, they should take into account the other documents on that item on the Agenda, including in the discussion consideration of the proposal presented in previous sessions by Argentina, Colombia and Mexico, contained in document SCCR/33/5. Regarding limitations and exceptions, it appreciated the updated versions of the studies and the presentations to be made that week on the subject. GRULAC supported an open, frank discussion on limitations and exceptions for libraries and archives, without prejudging the nature of the outcome of the discussion, in order to arrive at an effective solution for the problems affecting libraries and archives around the world. It remained interested in continuing discussions on the proposals submitted by the African Group, document SCCR/29/4, as well as the proposal by Argentina, document SCCR/33/4. It would like to discuss the action plan that came out on Friday on that subject. It was also interested in continuing discussions on the GRULAC proposal for analysis of copyright in the digital environment. The great importance of that proposal had been recognized by Member States. The challenges presented by the work in the digital environment were undeniable for protected works. It expressed its gratitude to the Secretariat for the study on the copyright legislation since 2006, which would prove to be a valuable instrument, and lead to constructive, informed debates. It repeated its willingness to work constructively on the topics of the Agenda of the meeting.

19. The Delegation of China expressed its support of the Agenda and the arrangements for the meeting. It noted that with the time passing by, they were facing the same challenges and changes in the world. It reaffirmed its flexible attitude with regard to any constructive proposal. In the previous sessions regarding principles, objectives, and technical issues it had expressed its views and proposals many times. In the current session, it would provide additional comments. It hoped that under the Chair's able leadership, and with the hard work of all delegations the items, or some of them, would achieve substantive progress.

20. The Delegation of Senegal speaking on behalf of the African Group stated that it continued to attach great importance to the items being discussed in the SCCR. In particular it referred to the protection of broadcasting organizations, exceptions and limitations, the resale right and copyright related to the digital environment. However, its priority in the Agenda was exceptions and limitation for libraries and archives for education and research institutions and for persons with other disabilities. The African Group had taken note of the latest developments in the Committee's work, including the finalization of the studies that had been assigned to eminent experts, the drafting of action plans on exceptions and limitation, the informal program on exceptions and limitations and other documents before the Committee. On the question of the protection of broadcasting organizations, the African Group thanked the Chair for document SCCR/34/4, as well as the summary presentation on the subjects under discussion, reflecting the proposals submitted during the discussion. It hoped that that document would serve as a basis for the discussion and would enable them to make rapid progress towards the adoption of a draft treaty on the subject. On the subject of exceptions and limitations, it was pleased that



the informal charts submitted by the Chair's predecessor in document SCCR/35/4 and SCCR/35/6 had appeared on that subject. It expressed its gratitude to Professor Reid and Professor Ncube for their Scoping Study on Access to Copyright Protected Works by Persons with Disabilities. Those studies were based on the replies to the questionnaire by 23 Member States. It also expressed its gratitude to Professor Seng for updating the study on limitations and exceptions for educational and research institutions, document SCCR/35/5 REV, in conformity with the mandate given to him during the thirty-third session of the SCCR. The African Group also extended its gratitude to Dr. Crews for updating and revising the Study on Limitations and Exceptions for Libraries and Archives, document SCCR/35/6. It awaited with interest the presentations on those documents. The SCCR had enough resources and materials on exceptions and limitations and the time had come for action by the Committee. In other words, the drafting of an appropriate legal instrument, which would be better suited as a binding legal instrument. As stated in document SCCR/35/9, the presentations could be useful in order to apply the finishing touches to the mandate of the SCCR. It hoped that any initiative or approach adopted at that stage of the negotiations under exceptions and limitations would be with regards to drafting articles and facilitating text-based discussions. That should be clearly reflected in the draft plan of action. It would make more extended comments on exceptions and limitations later on. Additionally, the African Group took note of the analysis of copyright related to the digital environment and the proposal on the resale right. It also took note of the proposal from the Russian Federation to introduce a new topic, regarding additional protection for theater directors at the international level. It committed itself as a group to constructed discussions on all of the items on the Agenda.

21. The Delegation of Kazakhstan speaking on behalf of the Central Asian, Caucasus and Eastern European Countries (CACEEC) stated that as one of the important WIPO Committees, the SCCR had proven itself as a significant negotiating platform in the field of copyright. It had produced treaties serving to the benefit of all Member States. However, despite the progress that had been made, there were outstanding issues which had been under discussions for a rather long time. CACEEC attached great importance to the issues on the Agenda of the meeting. The time had come to move to a new phase to accelerate the Committee's work. With regards to the broadcasting, it would like to take into account the technological advancements and challenges in the changing environment. As a consequence, it was aware that there was an urgent need to conclude the global treaty in protecting broadcasting organizations from piracy. It looked forward to fruitful discussions on that matter, the results of which could lead them to a diplomatic conference. On limitations and exceptions, it acknowledged the importance of access to knowledge and information for the benefit of all stakeholders, private and public. It hoped that the work of the Committee would come up with a solution, on the principles of inclusiveness and pragmatism for the better of the IP system, taking into account the needs and priorities of all. The proposal by the Russian Federation had gained group support. On behalf of the regional group it called on the Delegations of WIPO to support the initiative to strengthen the protection of the rights of theater directors at the international level. The issue of protection and enforcement of copyright and related rights of performance directors was important to a wide range of supporters of theater arts. In the absence of the relevant regulation, the risk of quality productions of stage performance and the abuse of rights of directors would increase. It was interested in promoting experience sharing in that area, and exploring possible ways to strengthen the protection and enforcement of copyright and related rights of performance directors of theatrical work. It hoped to get the support of Member States on that initiative. CACEEC was ready to undertake negotiations on the remaining unresolved issues in front of them. The Chair could count on their constructive engagement, with the view of having a successful completion of the work of the session.

22. The Delegation of the European Union stated that it had been actively involved in the discussions on the treaty for the protection of broadcasting organizations. Those discussions were of great importance. It was committed to continuing to work constructively to advance the

complex and technical discussions. It was important that that would respond to the current and future needs and interests of broadcasting organizations, and reflect the developments of the 21<sup>st</sup> century. In that context, it looked forward to the further engagement of the Committee, in order to be able to proceed with in depth discussions on the Revised Consolidated Text on Definitions, Object of Protection, Rights to be Granted and Other Issues, which had been prepared for the previous session, in document SCCR/34/3. It had mentioned on previous occasions, that a broad consensus was needed as to the extent of the protection to be granted, so that the treaty could provide broadcasting organizations with adequate and effective protection, in both current and future technological environments. Considerable efforts had been made during the previous sessions, in order to build consensus on the main elements of a treaty. It hoped that the current session would allow the Committee to agree on those elements in view of having a meaningful text that reflected the technological realities and developments of the twenty first century. Taking that in account, it reiterated its commitment to progressing towards the conclusion of a worthwhile treaty. The European Union and its Member States was also committed to a constructive continuation of discussions on exceptions and limitations. It would be most useful if the discussions were aimed at deepening the understanding of the state, and taking into account possible solutions and flexibilities under the existing framework of the International Treaties. In that regard, the European Union and its Member States was convinced that the existing international copyright framework already empowered WIPO Member States to introduce, maintain and update limitations and exceptions in their national legislation. In that manner, they could meaningfully respond to their local needs and traditions while working to ensure that copyright was an award to creativity. As a result, it did not see a need for any new and additional legally binding instruments in that area. Taking that into account, it remained convinced that useful work could be carried out in the Committee to provide guidance regarding the manner in which the International Treaties were implemented in national laws. It took note of the Secretariat's proposal for a draft action plan regarding limitations and exceptions, which was only sent the previous week. They all needed time to consider that proposal in content and form. As had been said in the past, the exchange of best practices in an inclusive way for the benefit of all WIPO members could serve as a useful tool in that respect. With regards to the topics currently being discussed under Agenda Item, "Other Matters", the European Union and its Member States continued to support the proposal by the Delegation of Senegal and Congo to include the resale right in the Agenda. It was in favor of the inclusion of the topic as a new item on the permanent Agenda of the SCCR.

## **AGENDA ITEM 5: PROTECTION OF BROADCASTING ORGANIZATIONS**

23. The Chair opened Agenda Item 5 on the protection of broadcasting organizations. He stated that the issue had been discussed extensively in the past and continued to be an issue of key importance for all of them. With regards to the work that they had started for some time, and especially the work of the previous session, he reminded the Committee that they had the Revised Consolidated Text on Definitions, Object of Protection, Rights to be Granted and Other Issues, document SCCR/34/4. A number of Delegates had referenced that document in their opening statements. That document had been introduced to the Committee during the previous session for everyone's consideration. In addition to that, he also reminded the Committee that there was the Note on the Draft Treaty to Protect Broadcasting Organizations, document SCCR/33/5, which had been submitted by the delegations of Argentina, Colombia and Mexico for their consideration. The discussions on broadcasting organizations been underway for a long period of time. The discussions had been conducted, continued to be conducted and should be conducted at a level, which had to include certain technicalities. With that in mind, some of the sessions and discussions would move towards informal sessions quite quickly. He opened the floor to group coordinators for statements, followed by national delegations and NGOs representatives. He requested that NGOs kept their statements to two minutes as per the usual practice in the interest of moving the processes along and getting to the informals in good time.

24. The Delegation of Switzerland speaking on behalf of Group B reiterated the importance of updating the international legal framework for the effective protection of broadcasting organizations, to address the technical issues and reality that they faced in the modern world. Group B remained faithful to the mandate of the 2007 General Assembly, which conditioned the convening of a Diplomatic Conference on the SCCR reaching agreement on the objectives, specific scope and object of protection of the treaty. There were elements that required further discussions if they were to progress to a stage where the Committee could propose to the General Assemblies the convening of a Diplomatic Conference. Member States had different understandings of the underpinning principles upon which that the Chair's text was based and relied upon. As a consequence, they should discuss those elements in order to try to better understand those principles. With that in mind, it remained committed to the discussions and to furthering its technical understanding, in order to determine the most relevant, effective and mutually acceptable provisions that would allow them to provide maturity of the text. For that purpose, it welcomed the discussion of the new version of the Revised Consolidated Text on Definitions, Objects of Protection, Rights to be Granted and Other Issues, in part A of document SCCR/34/4, as a reasonable basis for further discussion. It should be kept in mind that the critical element was the technical understanding and knowledge of the issues facing broadcasting organizations in the world, in order to decide how to best address the issues through a meaningful treaty text. Due consideration had to be paid to that fact, in any kind of exercises of the present and at future sessions of the Committee. It was important to take maximum advantage of the technical exercises, for the facilitation of the negotiation process of the Treaty. It committed itself to continuing to contribute towards reaching a meaningful outcome that would best serve all Member States and their stakeholders.

25. The Delegation of Georgia speaking on behalf of CEBS reiterated the great importance that its group attached to the conclusion of the treaty on the protection of broadcasting organizations. It also emphasized its eagerness to advance the work of the Committee in achieving progress on part A of document SCCR/34/4, the Revised Consolidated Text on Definitions, Object of Protection, Rights to be Granted and Other Issues. It looked forward to building the discussions on the text and advancing the work towards developing an adequate, effective legal instrument, that would not only protect broadcasting organizations in the traditional sense, but would take into account an ever rapidly evolving digital environment. It reiterated its commitment to working towards the convening of a diplomatic conference, on adopting the treaty, which would produce the meaningful outcome. Member States would engage constructively in informal sessions and discussions over the above-mentioned document and articles, in order to finalize the treaty that had been discussed for a long time.

26. The Delegation of Indonesia speaking on behalf of the Asia and Pacific Group reiterated that how the treaty would be applied was an issue that required balancing. It would like to see the finalization of a balanced treaty on the protection of broadcasting organizations, based on the mandate of the 2007 General Assembly, to provide protection on the signal-based approach for cablecasting and broadcasting organizations in the traditional sense. With that said, it would support the convening of a diplomatic conference on the protection of broadcasting organizations only if the mandate was met. The Asia and Pacific Group remained committed to engaging constructively in the discussion of the protection of broadcasting organizations, based on the consolidated text in document SCCR/34/4. It hoped that they would find a solution by furthering their technical and common understanding regarding that issue.

27. The Delegation of China stated that it had seen the consolidated text, which was a new text. With regards to the questions that were still being disputed, further discussion was needed. It hoped that good progress would be made, and pledged to offer its cooperation for a very full discussion of the text. With the cooperation of all parties it was confident that they would find a good solution to achieving progress and moving forward with the issue.

28. The Delegation of the European Union affirmed that the treaty on the protection of broadcasting organizations was a high priority for its member states. It was strongly committed to advancing work on the various issues identified during previous Committee sessions. Therefore, it looked forward to furthering the engagement of all delegations, in order to discuss the various issues, with goal of achieving consensus on the main elements of the possible future treaty. It hoped that further progress could be made on the basis of the Revised Consolidated Text on Definitions, Object of Protection, Rights to be Granted and Other Issues, that had been prepared for the previous session, which constituted a good basis for discussions. It was ready for in-depth discussions, and would also share a number of technical and substantive comments with the Committee that it had on the text. As had been said on several occasions, it was of the opinion that the Committee's work should result in a meaningful treaty that reflected the technological developments of the 21<sup>st</sup> Century. In particular, transmissions of traditional broadcasting organizations over computer networks, such as simultaneous transmissions, catchup transmissions warranted international protection over acts of piracy. It also attached great importance to the adequate cataloging of rights, which would allow the necessary protection for broadcasting organizations against acts of piracy, whether they occurred simultaneously with the protected transmissions or after the transmissions had taken place. It was also ready to discuss in more detail the other issues that had been identified in the text. In that context, that the examples set by the recent treaties in that area should serve as guidance for the Committee's work. More generally, a broad consensus was needed as to the extent of the protection to be granted, so that a future treaty could provide broadcasting organizations, evolving in an increasingly complex technological world, with adequate and effective protection. It hoped that the considerable efforts, which had been made during previous sessions could allow them to find a solution on the main elements of the treaty and bring them to a successful outcome.

29. The Delegation of Argentina associated itself with the statement made by Costa Rica on behalf of GRULAC. Updating the protection of broadcasting organizations was of great importance to Argentina, as had been stated in document SCCR 33/5, which it had cosponsored. It was necessary to solve a number of central issues on which there was currently no consensus. That would allow them to have a basic proposal for an instrument on the protection of broadcasting organization, based on a signal-based approach, as had been stated in the mandate of the 2007. That would lead to the convening of a diplomatic conference in the following year. As had been mentioned by the Director General, the mandate of the Assembly required a number of interpretations over time. That interpretation should include signals for all programs. In other words the different nature of the signal was important. The instrument they were discussing referred to related rights and a signal that carried programs. It was a question of making available to the public. From that point of view, it was essential, to bear in mind technological changes that had occurred recently and affected the way in which traditional broadcasting organizations carried out their activities. Equally important was the way in which consumers of content, had access to that content. Only a treaty would provide broadcasting organizations effective protection for their transmissions. It was also necessary to concentrate on issues having to do with the future treaty, without getting distracted by other issues, such as telecommunications, rules for telecommunications, or the defense of transmission, which was up to each state to regulate. It hoped to see more dynamic work in the present session, which would lead to progress on certain pending technical issues. That would facilitate an agreement on the objectives and scope of protection. It was committed to working towards a diplomatic conference on the adoption of a treaty on the protection of broadcasting organizations.

30. The Delegation of Senegal spoke in its national capacity on the protection of broadcasting organizations. It stated that the subject was of the greatest importance for its delegation, and hoped that the current session would make it possible to make progress. The discussions were taking place at the time in which its country, as in many African countries, was changing

everything over to digital. As a result, the protection of the signal was becoming more and more important. The development of technology had led to the appearance of new forms of piracy. One of the most obvious examples was the proliferation of electronic journals that brought together non-authorized elements of text and photo from broadcasting organizations. It was fully aware of those problems. Just a few weeks earlier, it had adopted a code for the press, where those issues were at the heart of its concern. That illustrated the importance it attached to the adoption of an international text on broadcasting organizations. It specified that Senegal for the moment was in favor of a neutral definition of broadcasting. It also highlighted the fact that broadcasters were seeing their economic models change. New uses were becoming possible thanks to new technologies. It hoped that those subjects would be taken into account in the course of the Committee's discussion.

31. The Delegation of the Islamic Republic of Iran associated itself with the statement delivered by Indonesia on behalf of the Asia and Pacific Group. On the issue of the protection of broadcasting organizations, it took note of the Revised Consolidated Text on Definitions, Object of Protection, Rights to be Granted and Other Issues. As that document substantially captured and contained all textual proposals concerning outstanding issues, it considered it to be an appropriate basis for the Committee's deliberations during the course of the week. In its view, the document would facilitate the attainment of the objectives of the discussion. Determining how and whether Intellectual Property rights should apply, with respect to broadcasting organizations was a development issue. Drafting a treaty to provide protection on the signal-based approach for cablecasting and broadcasting organizations, in the traditional sense, was of the utmost importance to all Member States and required careful balancing to reflect the legitimate interests of all parties and stakeholders in society. The scope of the Treaty, as one of the main elements, would indeed affect the entire provisions of the Treaty. Recalling the General Assembly's mandate, and keeping in mind the evolving digital environment and technological developments, the scope of the treaty would be confined to the protection of broadcasting and cablecasting organizations in the traditional sense. Such a scope, and the definitions contained in the document, should be drafted in a way that reduced ambiguities and ensured legal certainty. While there still remained divergent views at the policy level, in particular concerning the issue of deferred transmissions, it looked forward to the discussions, which would strongly contribute to breaching the current gap in positions. It invited all Member States to provided constructive engagement in the discussions, in order to have a tangible outcome at the end of the week.

32. The Delegation of Mexico stated that it hoped that the spirit of Marrakesh and Beijing would guide the work of the Committee, and that they would be able to continue with that impetus. For Mexico, the topic of the protection of broadcasting organizations was a very important one. Twenty years after Member States had begun the negotiations it was time to redouble their efforts, to make progress towards the conclusion of the issue and achieve the mandate, which had been given to the Committee several years ago. Together with Argentina and Colombia, Mexico had promoted a position, which addressed the topic, which stood out from the other topics addressed by the Committee, due to the maturity of the discussions. It was necessary to conclude the negotiations with a basic proposal for the protection of broadcasting organizations, and call a diplomatic conference to fully implement the mandate of the Committee. They could continue with the original mandate and couple it with the technological developments, so that they could achieve an instrument that protected broadcasting organizations. For that reason, it suggested considering the options that had been included in Part A of the document SCCR/34/4, dealing with those as they were drafted. It would allow them to develop a text that was open to any technological developments in the future. That was a key issue. The rights that should be granted should give a broadcasting organization the exclusive right to authorize transmission of its signal through any means possible. The reference to "any means", included a very broad coverage. It respectfully called on Member States to consider that possibility.

33. The Delegation of Brazil aligned itself with the statement of Costa Rica, on behalf of GRULAC. While the Committee had a busy agenda, it was important to make substantive progress on all issues under discussion, including broadcasting, various actions on limitations and exceptions, the resale right, as well as the crucial issue of copyright in the digital environment. It would make additional comments on each issue as they began the respective discussions. With regards to Agenda Item 5, the protection of broadcasting organizations, it was ready to continue its constructive engagement on the topics in the Chair's revised draft text. It reminded the Committee that with regards to the objective of preventing the theft of signals carrying broadcast programs, the issue and origin of the discussions dated back to the 1990s. It called attention to the first paragraph of Brazil's proposal tabled in 2005, document SCCR/13/3 Corrected which stated, "As a member of the Rome Convention and the home country of important broadcasting organizations, Brazil fully shares the objective of preventing the serious problem of the theft of signals, which are used to carry broadcast programs, because signal theft has entailed significant economic losses for broadcasting organizations. Brazil agrees that it would be appropriate to update the rights conferred by the Rome Convention to take into account the implications for signal theft of recent technological developments." Those words remained as valid presently as they had been at that time. It remained as convinced presently, as it had always been, that it was possible to fully protect broadcasting organizations, while paying due attention to the public interests and to the rights of other right holders under the copyright system. Discussions in the previous two sessions had allowed for a better understanding of their positions on those matters. It looked forward to constructive discussions over the text contained in document SCCR/34/4, within the terms of the 2007 mandate.

34. The Delegation of Japan stated that at the previous session, the Committee's discussion had been based on the consolidated text and they had made progress toward a common understanding of the issues. Broadcasting organizations were playing a pivotal role in the dissemination of copyrighted works. Under the current international copyright system, the international protection of broadcasting organizations had been left behind for a long time in the digital world. In that sense, the international protection for broadcasting organizations should be updated immediately. Having said that, the Delegation recognized that further discussion would be needed to deepen the understanding among the Member States. It hoped that further progress would be made during the session, in order to convene a Diplomatic Conference to adapt the treaty at the earliest opportunity. It was ready to engage in work in a constructive manner.

35. The Delegation of South Africa observed that the pursuit of the protection of broadcasting organizations was an imperative one for the broadcasting industry. It was also particularly central to development. The text of the draft broadcasting treaty should be limited to the 2007 mandate, that is, it should be signal-based and focus on broadcasting organizations in the traditional sense. To enable the treaty to be technologically relevant, that included broadcasting on any technology platform. The protection of broadcasting organizations had been a challenging endeavor, but one that eventually needed to be overcome, in order to provide protection against signal piracy and its impact. In recent meetings, they had made significant progress, growing closer to a shared common understanding on the scope and object of the Treaty. However, they still needed to work towards resolving some of the fundamental challenges that had prevented them from reaching an agreement. In particular, there was an increasing divergence on the concept of transmission. There was concern among some delegations that its application should not seek to expand the scope of protection, which was outside the 2007 mandate. It looked forward to discussions on that issue and other related matters, which should lead to the convening of a diplomatic conference for the protection of broadcasting organizations from signal piracy, in line with the mandate for a signal-based approach.

36. The Delegation of the Russian Federation attached the greatest importance to the discussions. It had already explained its reasons for that. It was absolutely indispensable that they stepped up their efforts. It was absolutely necessary to convene a diplomatic conference as soon as possible. As the discussions had shown that day, the majority of Member States were ready for that, and ready to work on a textual basis. It recalled the important progress that had been made in understanding the provisions of the Chair's text. Presently, they should move beyond that. The text could move from being a Chair's proposal to a proposal by the Committee. If they spared no efforts, they would be able to do that and move forward quickly. Currently a large number of delegates had talked about the need to take into account new technologies. It was ready to deal with the issues with great flexibility. As it had stated repeatedly, the adoption of new provisions was needed to take into account the interests of broadcasting organizations, while also taking into account progress in technology. That was an absolute necessity of extreme importance to them. It reminded the Committee that they had at their disposal a certain number of provisions within national legislation, as the Delegate of Senegal had already mentioned. A large number of decisions had already been made based on new technology. They should also take into account the work that had been done in the past 15 years. A large number of decisions had been taken, and the Committee should draw inspiration from them and not forget them. In fact, that could be seen in the Chair's text. It was grateful for that text, which allowed them to move forward and work effectively, taking into account new technology, the interest of broadcasting organizations, listeners and all communities involved. They should arrive at a concrete document that would allow them to have a diplomatic conference.

37. The Delegation of the Republic of Korea hoped that during the thirty-fifth session of the SCCR, the Committee would be able to reach a consensus on the protection of broadcasting organizations. In order to create concrete outcomes of the discussion on the protection of broadcasting organizations it was necessary to consider the difference between broadcasting environments, and the laws of each country, on issues including definitions, object of protection and rights to be granted. It looked forward to engaging in the discussions with other Member States on that topic in a positive, constructive manner.

38. The Delegation of the United States of America observed that despite the technical progress that had been made during SCCR 34, it had noted that there were still significant disagreements among Member States on fundamental issues related to the treaty, including the scope of rights to be granted, object and purpose. As a result, rather than focusing exclusively on informal sessions that week, on technical, textual work, it would be time well-spent to discuss in the plenary, some of the fundamental principles and purposes of the treaty. It submitted that request for consideration and looked forward to that discussion.

39. The Delegation of Iraq hoped the meeting would resolve all the questions that had not yet been answered. It would work in a constructive manner to achieve the expected results concerning the agenda items. In particular, with respect to the protection of broadcasting organizations, limitations and exceptions for libraries and archives as well as for persons with disabilities. It was confident that the Committee would keep to the mandate of the General Assembly of 2012. That mandate had been given to them with respect to the three topics they were addressing. Of particular importance was the other actors and the protection of other works. Technical progress, which had occurred since 2007, should be taken into account, as that would have an impact on the concept of broadcasting. The treaty that would protect broadcasting organizations needed to take that into account. They should also take into account the public that they were addressing for exceptions and limitations. They played a key role in knowledge acquisition, particularly in developing countries. It remained very optimistic that the Committee could achieve satisfactory answers to the questions before them.

40. The Representative of the African Union of Broadcasters stated that it was the first time

he had participated in the SCCR on behalf of the 58 members they represented . While it was his first time participating in the Committee, it did not mean that it was the first time that he had heard about the topics, which were before them. He might not have been close to the debate, but he had remained very focused on the heart of it, with many of the organizations with whom he had worked on those topics. That included radio broadcasting, which was at the heart of their jobs. He expressed support for all the topics being discussed in the Committee. They were a union of broadcasting organizations, and he affirmed their desire for a completion of the discussions on the Treaty on the protection of broadcasting organizations. As they were discussing that topic, particularly in the context of Africa, they should take into account the rise of the Internet and the damage that that had done to broadcasting organizations. Piracy had become an almost constant problem via the Internet in Africa. In fact, they could say that the Internet had become a place of no laws, and no rights in terms of copyright. Senegal was a member of their union and they supported its position. They had to pay close attention to that issue because all of Africa, and all 58 members of their union, were committed to the general shift to digital technologies. Within their union they had been reviewing that issue. They would have a major meeting in the next few weeks. He reiterated that it was an important topic. He also insisted upon the importance of archives in the context of digitalization, as well as the importance of persons living with disabilities having access to archives. In closing, as they said in Africa, and he could affirm that was the case presently, “when one entered a house full of wise men and women, the only desire was to stay there for a long time.”

41. The Representative of Knowledge Ecology International (KEI) informed the Committee that in preparation for the meeting, and at the request of some Delegations, KEI had prepared a timeline of the negotiations that linked to the various documents that had been prepared over the last 20 years on the topic. If Delegations would like a link to that timeline, they could send an email to KEI and they would be provided with a copy. The big concern, and the core issue that had to be resolved in the negotiations on broadcasting, was what did the term signal-based protection actually mean, and how far did it extend? If somebody had a film or a video broadcast, or had recorded music, and then they distributed it through any other media, it entered the public domain after a certain period of time. It may start in the public domain or it may be as if it was in the public domain, for example, through a creative common license, or through a copyright exception. If it went out over a radio station or a TV station, the question was, did it pick up some kind of layer of rights, which extended the protection for a long period of time, creating an additional party to clear the rights for? In document SCCR/34/4 there was a term of 50 years. That meant that for 50 years one would have to track down the person, or some corporation that 35 years ago, 27 years ago, or 7 years may not exist anymore, or may have been merged 17 times since then. One would have to try to track them down and figure out how to clear the rights. One might know that it was originally recorded, so a digital recording was made off of some broadcast a long time ago. With regards to exceptions and limitations, there was also the question of whether it was just a temporary right to deal with piracy, which would be fine, and which seemed to be what the Delegation of the United States of America had been proposing. It was a nice way to get out of that situation, without screwing up the whole Internet. It was not such a huge problem, but post-fixation rights and the Berne Convention made the quotation rights a mandatory exception. It was the news of the day. They had separate standards not connected to the three-step test for education and public affairs. In the draft text, document SCCR 34/4, all exceptions were voluntary. It was not necessary to have any exceptions at all, and on top of that when they did exist, the three-step was dumped on everything else. That was a problem. If a special right was created for broadcasters it didn't apply to anyone else. They would have a special right over copyright. It would not be able to stop that with broadcasters. Everything was moving to Internet originated content. How sustainable would it be to have one regime that applied Channel 5 and a different one that applied to everyone else? There would have to be some parity at some point. What direction would it go in? If it went to the point that everybody got that layer of protection, all of a sudden copyright would be practically a secondary thing, because it would be necessary to figure out



who the content had been copied from. One would have to clear it from that person, even though the copyright owner was known. That may be the least of one's problems. There were many things that KEI opposed in the current draft.

42. The Representative of the Karisma Foundation stated that it was a civil society foundation located in Colombia that looked at issues with regards to human rights in the digital sphere. The Representative had come to the SCCR to share some examples, which demonstrated the dangers that the current discussions could precipitate. During a typical Sunday football match, their team was playing. It was the 45th minute of the second half and it could be the last moment they had for winning. There was a goal, and everybody was excited. The digital platform collapsed and accounts could be closed due to spectators uploading videos, photos, penalties and goals. Any media that people had recorded themselves, either in the stadium or on televisions, were all apparently against the exclusive rights of transmitting the football show. Football fans were not the only ones who had seen that their photos were disappearing. Some of those people were actually professional journalists, who should have the right to take photos and write about sports. They were seeing that their content was being removed from digital platforms, on the basis of the supposed copyright, or author right of the broadcasting organization. Those cases showed some of the concerns, with regard to protecting the right of broadcasting organizations. Freedom of expression, access to information, social and political rights were being trampled in the efforts to protect broadcasting rights.

43. The Representative of the Asia-Pacific Broadcasting Union (ABU) stated that it represented more than 270 broadcasters in 69 countries in the Asia-Pacific region. Broadcasters in the Asia-Pacific region employed the same technology as their counterparts in developing and developed countries. Though the scale varied, they met the same fate at the hands of pirates. Time waited for no one, so did technology. More and more broadcasters in the Asia-Pacific region were making use of catch-up services. It was for that reason that there should be a future where broadcasters had different transmissions and online signals that were protected. They now had a mature text, which in the spirit of multilateralism should be widely and urgently endorsed by the WIPO Member States.

44. The Representative of the Japan Commercial Broadcasters Association (JBA) observed that delegates had already mentioned that they had been discussing the treaty on broadcasting organizations for 20 years, to provide a stable and vigorous framework against signal piracy. The Internet system had drastically developed and people all over the world now enjoyed the Internet in many ways as a convenient tool. On the other hand, plenty of rampant piracy occurred day by day, such as the retransmission of program carrying signals, transmitted by traditional broadcasting organizations. To cope with the piracy of broadcasting signals on Internet, they needed rights. That was a key issue in the broadcasting Treaty. Additionally, while discussions regarding many agenda items were taking place in the Committee, the time allotted for the current discussion was too limited. With regards to the broadcasting Treaty, they had been discussing the text and there were many options on the table. To narrow down those options and finalize the objective, object and scope of protection, more time was needed for discussions. The JBA hoped to have an extra session for the discussions on the broadcasting Treaty. For broadcasters, the establishment of the treaty against piracy was needed as soon as possible.

45. The Representative of the Copyright Research and Information Center (CRIC) noted that for 20 years they had been making efforts to establish the protection of broadcasting organizations. During the present session, they would discuss in detail, substantial issues, based on the revised consolidated text by the Chair, document SCCR 34/4. The Representative affirmed that they would be able to go to a diplomatic conference, even if there would be brackets, alternatives and discussion points in the basic proposal, as was the case of Marrakesh Treaty. However, under the 2007 General Assembly mandate, before proceeding to

a diplomatic conference, they should finalize the objectives, and the specific scope and object of protection. Among those issues, the object of protection was the most important and difficult to be finalized. As to the protection of transmissions over computer networks, they had developed various views concerning the protection of cablecasting. They needed to make an effort to bridge the difference of opinion. As to the specific scope, they had to get over the different issues raised by Member States, in light of the nature of broadcast carrying signals. They had to listen to and consider those views carefully and proceed with their discussions, for the finalization of the three points required under the 2007 General Assembly mandate. Last, but not least, they needed to make a roadmap to request a diplomatic conference, including the possibility of having a special session to discuss the issues intensively.

46. The Representative of the International Association of Broadcasters (IAB) stated that the IAB was an organization representing 17,000 small, medium and large broadcasters in the countries of the Americas. Over many years they had been following the negotiations in WIPO on the promotion of a treaty to effectively protect the rights of broadcasters. During the previous meeting of the SCCR in March of 2017, it seemed that there had been a consensus among the regional groups on the need to have a new treaty, beyond the discussions that were particularly of a technological nature. The Representative asked all delegations present to obtain the necessary agreement on the Chair's text, identified as part A of document SCCR 34/4, in order to consolidate a document, which would enable the Committee to recommend the holding of a diplomatic conference at the following meeting. The broadcasters of the Americas had been looking forward to new technologies and the changes on new platforms, and had been using them. However, in order to continue developing in the new digital environment, it was absolutely vital that they had a treaty, which protected their broadcasts, including delayed broadcasts, so that the public could have access to them at any time that they wished, including via the Internet. The broadcasters of Latin America were available to delegations to respond to any doubts or questions that they might have during the meeting.

47. The Representative of the Electronic Information for Libraries (eIFL.net) stated that when a new broadcast right extended beyond post-fixation rights, libraries had to take notice for social, educational and public reasons. Why did libraries show films? In Senegal some universities showed films to mark occasions, like world environment day, to help students understand important issues. A new layer of rights affecting access to content was an additional barrier to the access to knowledge. Libraries would have to deal with an additional set of right holders to clear rights for access, creating extra costs and complexity in the rights clearing process. For sure, it would also add to the Orphan Works problem that was already huge, where policymakers around the world were trying to find legislative solutions. Therefore, any new instrument should contain a robust set of exceptions that were future proofed for changes in technology and could be taken away by contract terms, or technological protection measures (TPMs). Consequently, limitations and exceptions set out in document SCCR/34/4 and in other issues should be strengthened. Part 1 should specify that the contracting parties should incorporate in the legislation limitations and exceptions. It should also contain a list of specific uses, like private use reporting of current events, use for teaching, research, libraries and archives and persons with disabilities. Second, in part 2, the three-step test appeared to go beyond the standard of the Berne Convention for quotations and use of the day. It was also not a part of the Rome convention. To avoid unintended consequences, references to the three-step should either be removed or replaced with a statement that countries should ensure that rights granted in the treaty did not reduce the application of limitations and exceptions to copyright and related rights in national law. That was to ensure that new rights did not extend to content that was in the public domain, content that was licensed under an open content license, or to content that was never intended to be subject to such long terms of protection. With those changes, the document would be improved.

48. The Representative of the North American Broadcaster Association (NABA) stated that it

represented radio and television broadcasters in Canada, Mexico and the United States of America. NABA had participated in WIPO meetings on the matter of broadcasting organizations since the beginning. It had observed many years of discussions. Many options and many alternatives had been presented. The best approaches were reflected in part A of document SCCR/34/4. The one area where more discussion may be necessary related to broadcasting activities on the Internet. It was essential that a new treaty be forward-looking and covered broadcasters current and inevitable future uses of digital technologies. The two Treaties concluded in December 1996, the WCT and the WPPT were clearly focused on the Internet and digital technologies. The Beijing Treaty also addressed the technological environment. The importance and impact of digital technology was no different for broadcasters. The reality was that the online activities of broadcasters would be an increasingly important part of their futures. In order to be meaningful, the Treaty had to provide protection for some, if not all of those activities. Similarly, the Treaty should recognize the reality of the ever-increasing level of piracy via the Internet and provide broadcasters adequate tools to address new forms of piracy. The objective of the Treaty should be to protect the activities of broadcasting organizations, regardless of the technology used. Such a technological approach was the best way to provide an adaptable, forward looking treaty. The Representative put forward three short points on the current text proposals; first, the definition of broadcasting should not contain a total broad exclusion of transmissions over computer networks. Transmissions over the Internet were a current, growing aspect of broadcasting. Second, the object of protection should allow for the possibility, on an optional basis, the protection of non-linear broadcasting. On demand services were a part of broadcasting because they were relevant, and were demanded by the listening and viewing public. Third, the rights accorded to broadcasters should enable them to control and nip all unauthorized uses, including those over the Internet. The current text proposal could perhaps work, as long as it was sufficiently broad, to follow all forms of infringement in the digital context.

49. The Representative of the European Broadcasting Union (EBU) stated that to ask them to say something new after 20 years was a bit of a difficult task. He suggested that perhaps he should simply say that that he was happy the Chair had started his career in the association. Why did he say that? Because the Chair would you understand that when he stated that after 20 years they should move into syncopation, for normalization in the room, it meant they should put the accents on the notes differently than they had done so far. They were presently in the stage of technology where it had become more and more difficult to define broadcasting, a computer network, honored line transmissions, et cetera. That, of course, would be more difficult in five years' time and probably practically impossible in 10, 20 years' time. There was now an opportunity to finalize the treaty. At the moment, they were still quite aware of what those differences were and that gave them the opportunity to make headway in the present meeting and finalize the text at the following meeting. That meant that at the following meeting they would like to see a treaty, with all the provisions that a treaty should have. So, in syncopating the discussion, one would have to say there was no valid reason that the definitions should not be technologically neutral. If there were difficulties with the regulatory framework that could be dealt with in a drafting matter. There was also no valid reason that online transmissions by broadcasters should not be a part of the protection. Everything that the broadcaster did was in order to make the programming available to the public. Third, there was no valid reason that broadcasters should not have effective remedies to combat online piracy. That meant that the available right should be a mandatory part of the treaty, otherwise it simply made no sense. On the other matters, as Delegations had already said, the treaty had to be aligned with the existing treaties on limitations and exceptions. Otherwise it simply would not work. For many of the other provisions, the Beijing Treaty already provided much guidance.

50. The Representative of the Motion Picture Association (MPA) stated that it was a trade association, representing the interests of six major international producers of films, home entertainment and TV programs. The discussions on the broadcaster's treaty had now been

dragging on for 20 years. They welcomed the Secretariat's efforts, as well as those of the Chair's predecessors to advance the difficult discussions. The Representative restated the MPA's support for advancing the work on the broadcaster's treaty, as expressed in the statement they had submitted during the previous session of the SCCR. He reiterated some of the main points in that statement. First, the treaty for the sake of a treaty did not make sense. Any eventual treaty had to be relevant and modern. One of the main benefits of any eventual treaty should be to help to promote authorized uses and discourage unauthorized uses. It was as relevant to developing economies as it was to more developed ones. They should not allow the discussions to be misled by others with agendas. He further presented a few important points, which the MPA considered to be redlines in any negotiations on the subject. The body of the WIPO Treaties had to be respected with regards to large titles concerning the three-step test, exceptions and limitations, and TPMs. Attempts to add or expand on exceptions and limitation would constitute a dangerous threat to the viability of a treaty. Those were redlines that need to be confirmed before an eventual diplomatic conference. Additionally, the decision on the possible diplomatic conference for a broadcaster's treaty needed to be taken on its own merits, based on a sufficient convergence of use and without prejudice to whether or how other topics on the Agenda may eventually be dealt with.

51. The Representative of Alianza de Radiodifusores Iberoamericanos para la Propiedad Intelectual (ARIP) recalled that they were not actually dealing with Copyright, but with a reviewed related right. Related rights referred to the signal, and they were presently requesting protection for the signal. They were not asking for the protection of the content of the program, but of the signal. Limitations and exceptions to the copyright, as some NGOs had been requesting remained intact. The present discussions were about the signal, and they had been looking at it from a signal-based perspective. They were not actually giving new rights. That was not what they were discussing. The discussions were about updating the Rome Convention. It was the mandate that they had in 2007, when traditional broadcasters got together and requested updating of the Rome Convention, to have new protection with regards to the digital environment, digital platforms, et cetera. The mandate had been given by traditional broadcasters for the discussions. The Representative affirmed that he was not referring to the cross-cutting issue of updating the rights of broadcasters for protection in the digital environment, because that had been mentioned by EBU and NABA. He wished to address the topic, which had been subjected to long discussions in the region that ARIP represented. Having a clear definition of "broadcaster" was an important element. It should include taking on the added responsibility of establishing the signal and providing the signal. That was what broadcasters did and that was also what broadcasters did through cable. In their region, there were large groups of entrepreneurs that had cables and retransmitted signals. Some of them only retransmitted signals from cable casters. They did not benefit from the traditional protection, because they were not the ones that established a program, and had the responsibility for programming and broadcasting the original signal. They were merely retransmitting. Furthermore, there was no mention of a double standard between terrestrial transmission and cable transmission. There really shouldn't be a difference between the two. It made no sense.

52. The Chair informed the Delegates that they would take up the technical discussions, which remain to be discussed in informal discussions. He requested that the Secretariat provide information regarding those discussions.

53. The Secretariat stated that the informals would take place in the new building, on the ground floor, in the largest room with the largest table that was available. The Regional Coordinators were asked to designate six persons to join them at the table. Others from the Member States were welcomed to sit in the room. Language interpretation would be provided. In the past, they had also offered the opportunity for other representatives of Delegations, and observers to hear the discussions from the other room using headphones. They could also see

the recording of the proceedings on the screen. That was done under the understanding that all information that was conveyed would not be conveyed outside of the proceedings. That meant that there was no further communication about the information over any form of social media or over any form of paper dissemination. If an individual opted to stay in the room, they would agree not to disseminate the information. With that understanding, the room would be available for observers and others to listen in.

54. The Delegation of Switzerland speaking on behalf of Group B stated that its understanding from the discussions that took place last week regarding the informals was that it would be a meeting that would include Regional Coordinators plus seven individuals from the Delegations. He asked the Chair for clarification. Group B had identified seven individuals to be at the table with the Chair.

55. The Chair replied that they it would be possible to squeeze in more chairs to accommodate 7 instead of 6 persons. He adjourned the meeting for lunch break and for informal session.

56. The Chair continued the discussions on Agenda Item 5, the protection of broadcasting organizations and provided a summary of the discussion that had taken place during the informal sessions. He stated that the discussions had been useful because the topics surrounding the broadcasting treaty were very technical in nature. They required a lot of discussion and interaction. The informal format was a useful way to get to grips with the issues and to move them along. They had had a good discussion on some very interesting and important technical issues. First, there had been a good discussion on the issue of “pre-broadcast”, and the extent to which the pre-broadcast should or should not be protected by the treaty. A proposal was tabled by the colleagues from Switzerland the previous day, which was then discussed amongst various parties. That day there had been further discussions on that proposal, which would be continued by the European Union and Switzerland. As a result of those discussions, they had gained a clear understanding of what they thought was the correct scope of the pre-broadcast issue. Thanks to Vice-Chair and the very deep spirit of cooperation between the various parties involved, they had also been able to find a way to move forward with regards to the technical issue of the definition of broadcasting. As Members States might recall, for some time now they had been dealing with the split in definition between broadcasting and cablecasting. They were hoping to be able to combine them into one definition under broadcasting, which would encompass both the transmission by wire as well as wireless means. The discussions were fruitful and some language had seemed to have gained a substantive amount of traction around the informal table. It was again testament to the constructive spirit in which the discussions were undertaken. A fair amount of time had also been spent looking at the other issues portion of document SCCR 34/4. In particular, they had spent time talking about limitations and exceptions, as well as obligations concerning TPMs. They had also discussed the term of protection with regards to limitations and exceptions and TPMs. There had been some interesting views. Some new issues had also been brought up, and some proposals that had been on the table continued to be discussed. Those were the issues which they needed to discuss in greater detail, as they progressed in the discussions. They also discussed the issue of the term of protection, and the last part of those discussions had addressed the scope of deferred transmissions. With regards to the term of protection, the issue of how far they would protect deferred transmission remained a very key issue, for which an agreement had to be found. While it could not be said that they had already arrived at an agreement, the fact that they had been able to go into detailed discussions had been very useful. It had been an opportunity to hear about recent technological advances and business model developments in different regions of the world from the broadcasting industry. As the Chair, he would prepare a document that would be purely from the Chair's perspective. That had also been done during SCCR 34/4. It would contain a part A that would address the Chair's revised consolidated text and a part B, which would record some of the proposals that had been

proposed during the current round of discussions, as well as some of the proposals which remained. Things in part B were issues that were interesting and merited further discussion, but perhaps did not quite take them in the direction towards consensus. That had been the criteria for things that had been included in part A. He would circulate the draft in due course for Member States' comments before he made the final call as to what would be included in part A and part B. That was to say that some of the things in part B were really very susceptible to a final push into A, for example the issue of pre-broadcast. The division into A and B allowed them to receive new comments, new proposals, while maintaining some discipline as to what went into A. With that, he stated that they had come almost to the end of the agenda item. Before closing the agenda item, he invited Member States to make last comments to be followed by last comments from some of the NGOs who had been listening in.

57. The Representative of KEI stated that he had been struck by the fact that the broadcasters had been included in the informals, to propose text and answer questions. He could understand the reason the broadcasters would relish the opportunity to do that. However, he wondered if the Chair thought it might be fruitful to have the critics of some of the proposals, or some of the rights that the broadcasters were requesting, to have that opportunity during the following session of the SCCR. Some of the issues had been given a kind of Pollyanna-ish treatment by broadcasters and did not highlight the areas of concern voiced by others. If they did not discuss the treaty with the critics, in the same way that had been done with the broadcasters, and did not listen to people who were really seen as creating problems, and were prepared to talk about them, they would be surprised later on by the general opinion outside of the room by people that actually knew about the technology, and knew about the effect of creating 50 years of rights for people that didn't author, perform, or produce content. It would be best to hear that in the informals, at the following session, in the same way broadcasters had pitched their proposals.

58. The Chair asked the Representative of KEI if he had heard the informal discussions when the discussions with the broadcasters were underway. If the Representative had heard the discussions, he would have noticed that there were no discussions at all on a draft text. It had been made very clear that the exchange with the broadcasters was a mean to better understand the recent technological advances and business model developments in different sectors. He had clarified throughout the discussions that none of what was said related to text. None of it related to any of the proposals. So the NGOs did not need to be there. There was no surreptitious discussion of any proposals in that room. Everyone present in the room heard the discussions there. It was very clear that the discussions never touched upon the draft text or draft proposals suggested by any of the stakeholders at the meeting. The views of the NGOs continued to be very highly important to them. At the very beginning of the agenda item, they had given them all a chance to give their views from whatever side of the spectrum. They would continue doing that throughout the other agenda items. The Chair noted that the way in which the Representative of KEI had characterized the discussions in the room was not similar to the way in which he had seen it. They would continue engaging with all the stakeholders in the industry, including the NGOs. That was the spirit in which they needed to push all of the discussions. He appreciated that the comments had come from a place that recognized the importance of getting everyone on board in order to have a good copyright system. As a result, they would continue engaging in every way possible with all the different stakeholders.

59. The Representative of Innovarte stated that he was also of the opinion that inviting the NGOs to the informals would be well perceived by other civil society organizations by demonstrating that there was equal treatment, with regard to different points of view in the informals. Referring to the issue of exceptions and limitations that was being discussed in the informals, the Representative highlighted that it was not only the Rome Convention that provided a list of cases where the exceptions could be provided, without at least having recourse to a test. That was also present in the TRIPS Agreement in Article 14.6, despite

having the possibility of having a chapeau on the exceptions, based on the test they had referred to in the Rome Convention. There was enough international practice to consider a list of exceptions to be incorporated within the framework of the new instrument.

60. The Representative of the Karisma Foundation stated she also supported the position that the opportunity should be given to all of them to be on equal footing. The discussion that the broadcasters had in the informals should have included other organizations, as that was critical to the treaty as well. Technological developments had been put forward and questions had also been asked about the text of the negotiation, specifically with regards to term of protection of the signal. It had been very disquieting to have heard that and without having had the possibility to take a critical look at that point.

61. The Representative of CIS stated that it would have been very informative and more productive for all the observers to have had an opportunity to talk as the broadcasters did. In that regard, she supported the statements that had been made by the Representatives of Innovarte, Karisma and KEI. Second, with regard to the discussions on limitations and exceptions, the Representative highlighted the national framework in India, where they had something that was called a "broadcast reproduction right." Within that framework, there existed a fair dealing right, as well as something that sated, "the making of any sound recording or visual recording for the private use of the person making such recording, also for purposes of bona teaching or research." The Representative wanted to bring the attention of the room to that provision.

62. The Chair closed Agenda Item 5, on the protection of broadcasting organizations. He stated that the following day they would begin the discussions on Agenda Item 6, limitations and exceptions for libraries and archives. However, before they began that agenda item, he would ask the Secretariat to present the action plans and take them through some of the thoughts and concepts behind the draft action plans. Once that was done, they would move on to the Agenda Item 6.

#### **AGENDA ITEM 6: LIMITATIONS AND EXCEPTIONS FOR LIBRARIES AND ARCHIVES**

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63. The Chair opened the agenda item relating to the topic of exceptions and limitations. Prior to the conversations that morning he had consulted with the regional coordinators. He summarized the way in which they would work on the topics. He asked the Secretariat and the DDG in particular, to give an overview of the action plans which were available in document SCCR/35/9.

64. The Deputy Director General explained the spirit in which they had attempted to try a new approach to the work, over the next few months, on the very sensitive issue of exceptions and limitations. For a number of years, they had been aware that it was a sensitive issue and every element that they brought to it had the potential of introducing misunderstandings. Therefore, it was a little bit of a hot potato that they had been throwing from one to the other. And so, they were trying to do their very best to achieve results, because that was the name of the game for the Director General. For all activities that they undertook, the goal was to achieve results and have concrete, specific actions that could be taken within the SCCR as well. She was aware that some Delegates would point out that there were five plans of action, rather than two, which had been the request of the Chair. However, they had spoken with the Chair between the sessions and he had confirmed that it was not a surprise to him that they had come up with five. Not only were there five plans of action, rather than two, there were also a number of activities, as could be seen on the screen. It was a visual projection of what they had attempted to explain in writing over the last few days. She would speak with them about the approach, and

they would return to the discussions in the afternoon of the following day. The approach was an analytical one. They wanted to start from the reality, with an objective analysis of the situation. Their goal being pursued was to find solutions, which were acceptable to everyone and therefore, accepted. That would enable them to measure the results of the approach in the short, medium and long term. They wanted to be able to follow and see the outcome. As they had seen the previous day at the side event presented by the Delegation of Brazil, the regime of exceptions and limitations was to a certain extent, something that was different, in different countries. That which was being demanded at the international level, in terms of a treaty, came from the countries that had the least provisions in their current national legislation for exceptions and limitations. The countries that had exceptions and limitations to their copyright legislation, were suggesting that it was best to begin with good practice and benchmarking. Subsequently, each country would move at its own rhythm to establish exceptions and limitations on the basis of their needs, starting with coverage by existing historic legislation and treaties, providing adequate exceptions and limitations, and measuring them with the three-step test, for acceptance in the wider field of copyright. That was the confrontation between the two sides. The Secretariat had been like a pachinko board, trying to ensure that those exceptions and limitations were shared in as much as they already existed in many countries. Over the next couple of days, they were going to see explanations, which corroborated the existence of those exceptions and limitations, through that initial analysis and the facts that came out of that. The countries, which had the most sophisticated copyright legislation also had the most sophisticated exceptions and limitations. Countries that were just beginning to establish their legislation, in order to achieve their effectiveness at international level, did not yet have those exceptions and limitations. As a result, the situation that they found themselves in, was one in which there was an issue that had been dealt with for ten years, with different groups of subjects being dealt with. It seemed to them that was no longer appropriate for a pragmatic approach. As a result, they were trying to continue with studies in sectors, which still required further research, because they had not yet been fully covered by existing studies. Professor Crews, who would be speaking at length about libraries and archives and museums, could speak about the domain of libraries and archives. As a result, they were interested in launching the work on the two domains at once, because libraries and archives had not been adequately covered in the past by their studies. Additionally, there had been a desire to cover museums at the request of the Committee. So there was a third area where they wanted to have further study. If the Committee so desired, they would address persons with other disabilities. However, that decision was in their hands. There were broad studies already on libraries, in the educational sector, but at the present moment they wanted to sit down around a table with a small number of experts throughout the chain of work of libraries, educational and research institutions. They would look at the mass of material that the research had provided and see what needed their particular attention. They were calling that a brainstorming exercise. That meant something that was a bit broader than a study, but a bit more restrained than a conference, on very specific subjects. They had foreseen one for libraries, one for museums, and another right at the end of the process, at the end of 2019, on other disabilities. It seemed that the intermediary stage, with brainstorming exercises would enable them to concentrate on the topics that were really of interest and importance to them. It was very clear to them that they would need to call on larger circles of persons, and that was the reason they had attempted to respond to the request made for some time by a number of countries, to have regional seminars. Those seminars would identify the expectations, as well as how they could actually respond to them at a regional level. The regional subjects had been requested, and they were proposing them in the area of libraries and also in the area of education. At the moment, those were being dealt with in two different spaces, but they saw them as two sectors, which had a lot of overlap in terms of the objectives they hoped to achieve, and the way that they looked at them. Subsequently, they would have the conference stage, to validate the approaches that had been identified by those exercises over the two years. They proposed having three conferences, one on libraries, one on museums, and one in the area of education and research. Those conferences would enable them to address the subjects. The conference



would bring the subject to a broader assembly, beyond the traditional number of people, including all the possible stakeholders. It was entirely in the hands of the Delegates. They could reject the whole exercise, or they could take some of the elements. Nevertheless, the logic was that the activities would progress over a two-year period, including the current biennium through to the end of 2019. That would give them a number of elements, which would make it an easier, more logical and more peaceful manner to move forward. It would involve an exchange of good practices, and look at technical support in a digital environment, new standards that might be needed, technical norms and the standards for providing an interoperability of systems, for a worldwide exchange. As a worldwide organization, they wanted to ensure the possibility of a worldwide exchange. Looking at the possible approaches, they did not want to preempt the decision on the solutions in any way, but they provided the proposal in a spirit of openness, dialogue and cooperation, to provide a new approach for a new day. The table presented provided the various different stages of the plan of action. They could call it one plan of action rather than five. They had tried to give analytical detail on the different elements, but that didn't mean they could not have bridges between one subject and another. However, those bridges would not lump things together, for example libraries, museums and archives. There could be a link between libraries and educational research organizations or between museums and archives. They wanted a relaxed approach, where they could work through Working Groups and the Delegations to examine the forward.

65. The Chair opened Agenda Item 6, on limitations and exceptions for libraries and archives. Dr. Kenneth Crews was present in the meeting. As part of the agenda item, he would be called upon to share the results of his work. But before that, he opened up the floor to group coordinators, Member States, and NGOs to talk about the agenda item, as was the usual practice. He asked that they tried their best to address topics that were new and to raise perspectives that were new. He also asked the NGOs to constrain their statements within a limited period of time, so that they could move on to Dr. Crews' presentation.

66. The Delegation of Switzerland, speaking on behalf of Group B, stated that it fully supported the view that libraries and archives played an important role in cultural and social development. As the studies presented during the previous sessions had described, many countries had already established their own exceptions and limitations for libraries and archives, which worked well, and respected the domestic legal system, within the current international framework. The work of the Committee should be shaped in a way that reflected that reality and complimented the well-functioning current framework. Group B appreciated that the aim of the discussion was to reach a better understanding of the topics. With regards to the working methods, they took note of document SCCR/34/5, which included the Chair's informal chart, used in previous sessions. It was ready to continue discussions, in order to explore common ground upon which they could all stand. The reality was that no consensus currently existed within the Committee for the work, and that should be duly taken into account. It highlighted the objectives and the principles proposed in the document SCCR/26/8, on the topic of limitations and exceptions for libraries and archives. The objectives and principles set out in that document could complement the work on limitations and exceptions for libraries and archives. It looked forward to hearing the presentations on both the updated study prepared by Professor Crews, and the updated data relating to limitations and exceptions for museums. Group B would continue to engage in the discussion on the limitations and the exceptions for libraries and archives, including the draft action plan proposed by the Secretariat in a constructive and faithful manner.

67. The Delegation of Georgia, speaking on behalf of CEBS, acknowledged the fundamental role played by libraries and archives in social and cultural development. The discussions in the Committee would assist them in fulfilling the public interest missions of libraries and museums. While CEBS was not in favor of a legally binding international instrument on limitations and exceptions for libraries and archives, one possible outcome of the discussions in the Committee

was the national implementation of the international Treaties. Therefore, it asserted that alternative approaches adopted by Member States, and the rich exchanges of best practices were solid ground to elaborate upon in national legal frameworks, which integrated local needs and could serve as an example for other Member States. It thanked the Chair for his work on the informal chart on limitations and exceptions for libraries and archives. It also looked forward to hearing the presentations on the updated study prepared by Professor Crews, and the updated information related to limitations and exceptions for museums. It thanked the Secretariat for preparing the draft action plans on limitations and exceptions. It took note of the documents and believed that for their efficient analysis, more time was needed.

68. The Delegation of Senegal speaking on behalf of the African Group recalled that during various sessions of the SCCR, the African Group had examined the question of limitations and exceptions in favor of libraries and archives, educational institutions, teaching institutions and persons with disabilities. In examining copyright systems, exceptions and limitations contributed to establishing an equilibrium between right holders and the interregional and public service sectors. While trying to ensure adequate balance in the intellectual property system, exceptions and limitations also played a catalyzing role with regards to accessing technology. In that way they stimulated innovation and creativity. Looking at the spirit of the 2012 mandate, and the sustainable development goals (SDGs), the objective was guaranteeing access to all, in the field of education and providing an equal footing for learning throughout life. Of additional importance was the establishment of an inclusive society, and a collective participation in development efforts, especially with regards to human rights. While there were other relevant recommendations and plan of actions at WIPO, the 2012 mandate supported the SDGs, which had been founded in the United Nations system. The African Group was very interested in the information contained in Professor Crews' study, with regards to people who suffered from other disabilities, educational activities, libraries and archives. The information contained in the different documents associated with the Chair's informal chart were appropriate resources to have text-based negotiations. The African Group welcomed the approach to draw up action plans, which expressed the desire to make headway on the issue of exceptions and limitations with regards to the future work. It thanked the Chair for drawing up document, SCCR 35/9. The preparatory work on that document had been monumental. It also welcomed the plan of action for the organization of regional seminars. However, it remained concerned about the absence of the prospect of having draft articles drawn up, which was the most immediate action to be taken in the pursuit of their work on exceptions and limitations, in keeping the 2012 mandate. It was in favor of a legally binding instrument. It reminded the Committee of its proposal made in 2017, and asked the Secretariat to draw up draft articles, and to do so soon. The Secretariat could find basis for that work from everything that existed on the matter, including studies, documents, and the working document, SCR 26/4 PROV., which contained the African Group's provisions to draft a legal instrument in favor of libraries, archives and people who suffered from other disabilities. It could also examine document SCCR 29/4, drawn up by the African Group, Brazil, Ecuador and Uruguay. It expected a fruitful session and hoped that they would be able to draw up a conceptual action plan for exceptions and limitations. The African Group committed itself to working diligently on the topic.

69. The Delegation of Costa Rica, speaking on behalf of GRULAC, stressed that the exceptions and limitations were critically important for people and for the collective development of modern societies. It played an important role in obtaining knowledge, which could be hampered by a lack of information. WIPO could contribute to providing coherence in how to address exceptions and limitations at the international level, by helping to close the gap between the production and dissemination of knowledge. That became even more relevant after taking into account the studies that they had discussed in the SCCR. Those studies had shown that the Member States needed an informative reference for the formulation of policies, in order to adopt exceptions and limitations, respecting differences in the legal systems. The results of the studies should be processed in such a way that could serve as a reference for those responsible for formulating policies. The exchange of national and regional experiences amongst the Member States could also serve to compliment the studies, allowing the Committee to achieve tangible results. GRULAC supported an open and frank discussion on limitations and exceptions for libraries and archives, without prejudging the nature of the outcome of the discussions, in order to address the problems affecting libraries and archives around the world, with a focus on cross-border aspects. It would continue to work constructively to advance international discussions on the issue. It hoped that at the end of the current session, they would adopt an action plan in accordance with their mandate.

70. The Delegation of Indonesia, speaking on behalf of the Asia Pacific Group, stated that as it had already outlined in its opening general statement, exceptions and limitations for libraries and archives were of critical importance for individuals and the collective development of societies. In order to advance and promote culture, science and education, it believe in a balanced copyright system that did not only take the commercial interests of copyright and right holders into account , but also considered the larger public benefit, by enhancing access to those works. It thanked Dr. Crews for his study and looked forward to the updated and revised study on copyright exceptions and limitations for libraries and archives. It took note of the notable improvement on the 11 items. The outcome of the discussions had been reflected in the Chair's chart for the libraries and archives in document SCCR/34/5. It conveyed its appreciation to the Secretariat for having provided the draft action plan for libraries and archives. All of those documents were a good basis for consideration in the Committee, to facilitate progress on the issue. It reaffirmed its commitment to remain constructively engaged in the future draft plans on limitations and exceptions for libraries and archives. It hoped all Member States would engage constructively on the issue, based on previous discussions and new inputs, so that they would be able to make progress.

71. The Delegation of China thanked the Secretariat for the presentation on limitations and exceptions. During the previous discussions, they had reached a high degree of consensus on the issue. Therefore, to balance the discussions on the issue, and to have substantial progress, the Chinese Delegation was ready to share the relevant information from China. It had already submitted its feedback according to the request of the Secretariat. Now it was ready to hear the presentation by Dr. Crews and would participate in discussions actively and constructively.

72. The Delegation of the European Union and its Member States repeated that it believed in the crucial function of libraries and archives, for the dissemination of knowledge, information, and culture and for the preservation of history. It therefore continued to see merit in discussing a balanced international copyright framework that would enable those institutions to fulfill their public interest mission. It was willing to continue to engage constructively in those discussions. The European Union and its Member States had listened with interest to the draft action plans prepared by the Secretariat. In that regard, it reiterated that its favored approach remained one in which the work in the Committee focused on the way in which exceptions and limitations could function efficiently, within the framework of existing international treaties, and WIPO Member States took responsibility for their own national legal frameworks. It supported an inclusive exchange of experiences and best practices, and when necessary the assistance of

the Secretariat. On that premise, it had engaged in various discussions on the agenda item, as reflected in the Chair's informal chart. A meaningful way forward could be to focus on a thorough and systemic understanding of the challenges faced by libraries and archives, giving full consideration to innovation, relevant markets and the solutions provided, including those available under the current international framework. A possible outcome of the discussions in the Committee, under the current agenda item, could come in the form of guidance regarding the national implementation of the international treaties. It expressed once more that it could not support work towards legally binding instruments at the international level.

73. The Delegation of Brazil aligned itself with the statement made by Costa Rica on behalf of GRULAC. Brazil highly valued the essential contributions of authors to the progress of knowledge and education, through books that benefited society. That was the reason it favored a copyright system that was balanced and took into account the legitimate interests of rights holders as well as the public interest, scientific, cultural and social progress and competition. It did not make sense to promote access to knowledge, if there were no incentives for the creation and the production of knowledge. It made just as little sense to provide such incentives if the knowledge created was out of the reach of the vast majority of the population. Under that framework, exceptions and limitations had an important role to play in the attainment of the right to education and the access to knowledge. WIPO and the SCCR in particular had an important responsibility to provide coherence as to how exceptions and limitations should be approached at the international level. Studies done at the request of the Committee had provided essential information that allowed them to discuss the issue in a substantive fashion, while taking the interests and the constraints of Member States into due account. In Brazil's view, having invested so many years in discussing exceptions and limitations for libraries and archives, the SCCR was already very close to a common understanding on the need for clear definitions and exceptions, to illustrate the way forward for an international solution. It recognized some of the commonalities in the objectives of libraries, archives and museums as cultural heritage institutions. No library in the world, no matter how large could possibly have every title a user might need, libraries had to collaborate to support a global network of access to information. When the library did not have the journal, article, or book chapter requested by the user, it could go to an international database to identify a library that did, and it could request a copy for individual use. Those books often had no commercial value, were not available on the market and might have great value to a scholar, as building blocks for new scholarly work. Exceptions and limitations were necessary at an international level, to allow for that type of collaboration. It did not in any way affect the interests of rights holders. The Delegation looked forward to continuing constructive work and discussions with all Member States. It was open, as it had always been, to dialogue with them, as well as with other stakeholders and all interested parties.

74. The Delegation of Ecuador endorsed the statement made by Costa Rica on behalf of GRULAC. In line with what had been said, it underscored the importance of having open and constructive discussions on limitation and exceptions. It was confident in the Committee's capacity to deliver specific concrete results, which would help to take care of the needs of the population, with regards to access to education, information and culture, as essential mechanisms for overall development. That in turn, would lead to the achievement of the objectives of all the countries. The studies, which were ongoing, as well as the discussions that had taken place, had shown that limitations and exceptions were very different in each country's legislation. That had led to difficulties in taking care of the issue effectively on the part of Member States. Along those lines it was essential to establish a minimum agreement, so that they had the proper application of exceptions and limitations. In the case of Ecuador, several efforts had been made to have a legislative framework that was appropriate for limitations and exceptions in favor of archives, libraries and museums, as well as for educational and research purposes. Those norms, which were not required, also envisaged the carrying out of activities by rights holders to deal with people who had disabilities. That had been established in the

organic body of knowledge and innovation, known as the indigenous code in Ecuador. It expired in December of 2016. As the Delegation had communicated to WIPO in March, in spite of what had just been said, it was aware that all the national initiatives, such as the one previously mentioned, would be minimum, as long as there was no proper instrument that provided certainty at the time of using limitations and exceptions in the international domain. As to limitations and exceptions for libraries and archives, it welcomed the updated and revised version of the study carried out by professor Kenneth Crews. In the case of Ecuador, that work had used as its source, intellectual property law, which had been derived from the current indigenous code. It provided for exceptional responsibilities for libraries, archives and their civil servants, for acts that users might carry out. In particular, the limitations and exceptions for libraries and archives addressed acts of reproduction, adaptation, translation, transformation, arrangement, communication and distribution. It hoped to see that information properly included in the study. Finally, it thanked the Secretariat for the plan of actions, which had been proposed. It was ready to discuss them in a fruitful manner for the progress of the Committee's work.

75. The Delegation of the Islamic Republic of Iran observed that while it had made note of the effective contributions of the limitations and exceptions regime to a balance between private rights and the general interest, promoting access to a larger knowledge and know-how, existing limitations and exceptions in the current international copyright treaties did not sufficiently address emerging technology and cultural changes. Based on the mandate given to the Committee by the General Assembly, and bearing in mind the notable progress achieved on the discussion on all subject matters, it supported establishing a legal instrument for limitations and exceptions for libraries and archives and other subject matters. The work of the Committee on that matter was not only to reach a common understanding among Member States. Rather, the Committee had been mandated to create a legal framework for exceptions and limitations. Norm setting was the only way to ensure that WIPO Member States could provide a basic level of harmonized limitation and exceptions for such institutions and other subject matters. The Committee had the chance to shape the international and corporate regime for the good of millions of people, who needed to have better access to education, research and other activities. That would enable countries to ensure access to knowledge and know-how for all. The Delegation asserted that the informal charts of the two Chairs, which had been based on a study for a textual proposal for a treaty or another form of instrument, and the proposal submitted by various delegations, were useful to tools in their hands for future discussions on the issue, in a normative manner. They should become working documents of the Committee. The Delegation looked forward to all presentations on the subject matter and would take the floor again concerning the draft action plans at later stage, when discussions were opened on that issue.

76. The Delegation of India aligned itself with the opening statement made by Indonesia on behalf of the Asia Pacific Group. Limitations and exceptions for libraries and archives, educational and research institutions and for persons with other disabilities were of great significance to India. The protection of intellectual property rights was crucial for right holders. At the same time, intellectual property rights were seen as drivers of access to knowledge worldwide. India supported the promotion of a balanced copyright regime that allowed creators to earn a fair remuneration for their work, while at the same time ensuring that everyone, regardless of their resources or background could learn, create and innovate. It was necessary that every Member States benefited from the limitations and the exceptions to copyright necessary for libraries and archives to optimize their operations. Those provisions could not be upheld mainly by contract terms, or through the use of technological protection measures. The attainment of the right to education and the access to knowledge should be guiding principles for the Committee's work on exceptions and limitations. It was also necessary to facilitate the work of libraries and archives internationally, in the interest of international research and cultural heritage. The informal chart prepared by the Committee on limitations and exceptions for

libraries and archives, as well as for educational institutions, required careful consideration by the Member States. The Delegation thanked Professor Crews, Reid and Ncube for the updated and revised study on copyright limitations and exceptions for libraries and archives, as well as the scoping study on access to copyright protected works by persons with disabilities. It looked forward to the presentation by Mr. Muller on exceptions and limitations for museums. It acknowledged the progress made in the discussions on the topics relating to exceptions and limitations for libraries and archives. The outcome of the discussions had been reflected in the Chair's chart on limitations and exceptions. It welcomed the updated Seng study, and the additional analysis of the study on copyright limitations on educational activities. Those studies, along with the Chair's chart on exceptions and limitations for persons with other disabilities provided a pertinent overview of the topic. It thanked the Secretariat for preparing the draft action plan in document, SCCR/35/9, as had been requested by Member States during the previous session of the SCCR. It would engage constructively in those discussions and requested reserving its observations if there were any. It looked forward to learning more from the scoping study on the impact of digital developments on the evolution of national legal frameworks over the past ten years. It also thanked Professor Rostama, for the preparation of her scoping study. It would continue to play a proactive and constructive role in the hope that the SCCR would be able to find a pragmatic outcome on all of those important issues.

77. The Delegation of Indonesia, speaking in its national capacity and agreed that there was a need to maintain a balance in copyright, for the larger public interest, particularly in education, research and access to information, as stipulated in the Article 7 of the TRIPS Agreement. It understood and was fully aware that there was no consensus to do normative work. However, the Committee had also been founded to make sure that what had been mandated by the General Assembly was done. As a result, the Committee should substantively discuss the issues on exceptions and limitations, to find common ground for normative work on an effective international legal instrument, to facilitate the lawful exercise of exceptions and limitations. For that purpose, the Committee should use all the inputs at its disposal, including the Chair's chart on exceptions and limitations for libraries and archives, document SCCR/ 29/4, and the draft action plans, as the basis for further discussions, so that they could make progress on the issue.

78. The Delegation of Malawi aligned itself with the statement made by Senegal on behalf of the African Group. With regards to the issue of exceptions and limitations, it realized that the exceptions used by libraries were necessary to provide access to knowledge. However, it strongly believed that open-ended limitations and exceptions would negatively impact right holders and authors. It therefore strongly advocated for a balanced approach, which would benefit both parties. For that reason the Delegation welcomed the plan of action, which had been provided by the Secretariat and had been presented that day. It especially welcomed the inclusion of regional seminars on the issue. Through those seminars they would be able to identify and come up with solutions, to improve their understanding of the issues and conclude the discussions. It thanked the Secretariat for coming up with the draft plan of action.

79. The Delegation of the Russian Federation noted that the development of new technologies required new approaches to the regulation of copyright and the examination of the issue of limitations and exceptions, which they had been working on for many years. They should always recall that the most important thing was the balance of the interests. On the one hand there were the interests of society and on the other were the interests of the authors and the rights holders. If they could find that balance, it was vital that they had a document that received the full support of all delegations. The Delegation underlined once more that exceptions and limitations played a very important role in the development of social processes, particularly with regard to education, the exchange of information and the possibility for students in different countries to become familiar with new technologies and new ways of working. That possibility was only provided by exceptions and limitations. In their country they already had the appropriate legislation. Practice had shown that those exceptions and limitations were effective

for society and individual users. At the same time, they did not limit the rights and interests of authors. They were in agreement with the approach suggested recently to examine the issue in a global and holistic way. There was the question regarding the kind of document they would come up with at the end. Would it be a treaty or some other kind of agreement? That was not really the most important thing. The important thing was that they needed to determine the trends and the way in which exceptions and limitations would be developed. It did not see a particular distinction between the two blocks that were currently examining. It was time for them to actually look at exceptions and limitations for libraries and archives, and exceptions and limitations for educational and research institutions. Those exceptions and limitations were absolutely the same for both blocks. It would enable them to make a great leap forward if they actually took an approach that had a unified document on both of them. They were ready to work in any format of discussions and they were ready to actively participate in establishing such a document. They were not demanding any particular approach or particular format.

80. The Delegation of Botswana aligned itself with the statement made by Senegal on behalf of the African Group. Limitations and exceptions were necessary for a balanced copyright system. The Delegation appreciated the studies on limitations and exceptions, which had been undertaken thus far, and for the full consideration provided to Member States with respect to their respective national legislations. It was important that the Committee considered the issue and engaged extensively towards finding a balanced outcome for the benefit of all. The Delegation thanked the Secretariat for the action plans, which would help them to determine a clear way forward. It looked forward to engaging constructively with other Member States on the action plans, in order for them to move forward.

81. The Delegation of Côte d'Ivoire supported the declaration made by Senegal on behalf of the African Group. The issue of exceptions and limitations, in the context of the modernization of technology, meant that they needed a more prudent and realistic approach, taking into account, what had already been achieved.

82. The Delegation of Cameroon stated that the objective of its intervention was not to take up what the African Group had already said which it supported entirely. It wished to address the importance of exceptions and limitations, as being fundamental in the implementation of intellectual property for literary and artistic rights. In its national legislation, Cameroon had exceptions and limitations in its law of 2005, and it was currently strengthening that legal framework. It thanked Professor Crews for all the work that had been undertaken on exceptions and limitations and thanked the Secretariat for its contributions. It remained open to hearing about other national experiences, which would enable them to refine their own legislation on the matter.

83. The International Federation of Library Associations and Institutions (IFLA) stated that it spoke for eiFL.net, the International Council on Archives (ICA) and the international Council on Museums (ICOM). First, they were very grateful to those Member States that had been committed, for many years, to action on limitations and exceptions, as an integral part of balanced copyright law. Studies commissioned by WIPO, particularly for them, the three studies of limitation and exceptions by Professor Crews had been invaluable in demonstrating not only what was possible, but also the gaps that made cross-border information exchange in the digital age very difficult, if not impossible. Second, they were grateful to the Secretariat for focusing on action and on results, as progress on limitations and exceptions was needed and long overdue. To that end they supported the proposed regional seminars, to include all stakeholders. However, they were also hopeful that Member States, noting and drawing on the extensive discussions on limitations and exceptions over the past decade, would agree to consolidate, simplify and accelerate the draft action plans. As a result, the Member States of the SCCR would be prepared to fulfill the SCCR's mandate, to determine the form and the content of an appropriate legal instrument, in regard to limitations and exceptions for archives,

libraries and museums, as early as SCCR 37.

84. The Representative of the Society of American Archivists (SAA) stated that it was North America's largest professional organization. Its members managed billions of primary sources from across the globe. It worked closely with authors and respected their rights, but the limits of copyrights created huge challenges. Archivists were concerned not with the past, but with the future. They needed WIPO's help because their core business was to provide the future with access to knowledge, found in everyday documents, that did not make it into common circulation. They had to use current technology to preserve and make that knowledge accessible to users anywhere in the world. For example, a Chinese student at a Japanese university contacted their archives for copies of unique documents authored by labor unions in post-World War II Sweden. Are they mundane items? Yes. But existing national laws defined them as copyrighted works. They did not understand the reason that industry advocates stubbornly blocked efforts to ensure international copyright balance, when the items were never created for commercial contribution in the first place. Today's archives and libraries struggled against sweeping claims of exclusive rights that had little to do with their realities. That left them no choice but to act. Archives existed to be used. Their public mission required them to make copies for their users. Should they ignore the law to do their work? They were not sure of that. That would be advertising to the world that copyright was an irrelevant artifact of a bygone era. No amount of studies could change that reality. Member States knew the issues thanks to the former Chair's chart. Archives, libraries and museum professionals had outlined the breathing space they needed to fulfill their mission. It was now time to stop the delaying and begin the textual work, to ensure the future vitality of copyright.

85. The Representative of Centre for Internet and Society (CIS), in agreement with the others, asserted its belief that an international binding instrument to cover exceptions and limitations for archives and libraries was critical. In several countries, the set of limitations and exceptions did not serve all the intended beneficiaries in a comparably equal manner. India like many other countries present had a rich cultural heritage. Doing any activities with all audiovisual material, involved identifying and clearing rights connected to orphaned works and traditional cultural expressions. Imagine the onerous task of an archive of clearing all of those rights in connection with appropriate agencies, and of course clearing additional permissions from authors and performers. In their research, they had discovered that in India, most archives miserably failed on that front, causing valuable material to be logged in storage rooms for decades. Needless to say, accessibility to that national wealth of knowledge in archives also supported the mission of libraries, museums, educational institutions and researchers. They strongly believed that an update to the international copyright system, via a binding instrument, would serve many countries. It would empower everyone to fill in the deficiencies in relation to libraries, archives, educational and research institutions, museums and persons with disabilities.

86. The Representative of Knowledge Ecology International, Inc. (KEI) thanked the Deputy General for the detailed and forward-looking plan of action. She stated that it was useful for them to unpack the many issues with exceptions and limitations. When put in motion it would clarify and facilitate progress in the area of limitations and exceptions. Like GRULAC and the Asia Pacific Group and like many other delegations, it believed limitations and exceptions were a critical issue for the individual, as well as for society as a whole. As they sought to close the gap for the dissemination of knowledge, they were not prejudging a possible solution, including a binding and nonbinding instrument. A balanced copyright system did not only provide protection and remuneration for authors and their works, but also access to knowledge. Therefore, the Committee should continue to engage on the possible approaches for an international harmonization of limitations and exceptions to copyright rights and related rights. The Representative made five points. First, regarding possible works, they believed that the Committee could engage in the drafting of model laws for libraries, archives, museums, educational institutions and persons with disabilities. Second, with regards specifically to other



disabilities, they proposed that the SCCR looked again at Article 15, paragraph b of SCCR/18/5, which would extend the benefits of the Marrakesh Treaty to persons with other disabilities, who due to their disabilities, needed an accessible format of data to be made, which would allow them access to the same degree as a person without a disability. Third, they believed that an updated searchable database of exceptions and limitations for libraries, archives and museums would also be extremely useful. Fourth, they agreed with others that the analysis of issues related to the cross-border context, including digital uses was quite important today. And finally, they would like to ask the Secretariat to assess whether the 1971 Berne appendix for developing countries had been a successful effort and useful instrument and if not, why?

87. The Representative of Innovarte thanked the Secretariat for its work in making the proposed plan of action. It believed that some of those actions would be complementary, and would help the work of the Committee. However, in no case should they draw them away from the work and the progress that had been made in the last number of years, with regard to archives, libraries, et cetera, in the Committee. That work was reflected in the Chair's chart, and the proposals from Uruguay, Brazil, the United States of America, the African Group and included the inputs of other Member States of the Committee. They reflected the attempts to find a consensus for international work on copyright and exceptions and limitations within the Committee. The Marrakesh Treaty had achieved success and it would be a great success for the Committee if it provided access to culture, and gave legitimacy to copyright for the benefit of authors and societies as a whole.

88. The Representative of the International Publishers Association (IPA) stated that it was a federation of national, regional and specialist publisher associations. Its growing membership now comprised of 70 organizations from 60 countries in Africa, Asia, Australia, Europe and the Americas. It reiterated its view that the current international legal framework provided ample flexibility for Member States to enact exceptions and limitations, consistent with their own legal traditions. It went without saying that exceptions and limitations, which were legal defenses to what were otherwise copyright infringements, had had a profound impact on all rights holders as well as other stakeholders. The three-step test provided the means for measuring that impact. That was the reason it was applied internationally, nationally, both by legislators and courts. With regards to the draft action plan, while some details might need further clarification, the documents provided a useful basis for a number of activities that could support the exchange of information, capacity building that could inform countries, including in particular, developing nations, in their efforts to ensure balanced national copyright laws, consistent with the international legal framework. The IPA stood ready to participate in conferences and provide legal and commercial experts to assist.

89. The Representative of European Visual Artist (EVA) stated that its intervention was given in collaboration with CIGP, the international network of 70 visual collective management organizations within the International Confederation of Societies of Authors and Composers (CISAC). They represented the collective organizations for visual works, which included fine art, photography, illustration, design, architecture and other visual works. Their members managed the rights for close to 100,000 visual creators. Licensing solutions provided by visual collective management organizations were facilitating the use of copyright protected visual works in museum's collections in the analog and digital environment on a daily basis. Through vast experience and expertise, visual collective management organizations offered museums tailor-made and effective licensing solutions, which were in general subject to agreements between the representative of the national museum body, and the collective management organization. Museums belonged to some of the most important partners, as the licensees of visual collective rights management organizations, which had concluded hundreds of contracts with museums and other cultural institutions. Through those licensing solutions, museums were able to obtain full legal certainty, with the lowest possible administrative burden. That was made possible by using the international network of visual collective management

organizations, which were able to offer one stop solutions for visual art work licenses, for works by visual creators from all over the world. The licenses provided by visual collective management organizations balanced museum's legitimate needs to access and use works of visual art in order to fulfill their mission, and on the other hand, artists' basic human rights to protect their moral and material interests, resulting from their artistic productions. In many countries around the world, museums also benefited from various models of collective licensing, which enable mass digitization and opened museums' digital collections to the public. Such models granted licenses for sometimes thousands or millions of works, under one single license. Easy access to licensing was an extremely important tool, which enabled the access to visual art. At the same time, it ensured that the basic moral and economic rights of visual creators were adequately protected. In return, that supported visual creators, who were able to support their livelihoods, through their creative work, which enriched the culture of everyone. Furthermore, the income generated to visual creators through licensing enabled and created incentives for visual creators to continue to create new works of visual art, which should be seen as an investment in the production of art and culture.

90. The Representative of the International Federation of journalists (IFJ) stated that it represented 600,000 journalists in 140 countries worldwide, north and south. The Representative stated that he was a working journalist from London, which was currently considered a developed country. The IFJ recognized the importance of libraries and archives. They also noted the number of delegations referring to the needs of new digital environments. One feature of those environments was that libraries and archives in effect, acted as publishers, making their holdings available offsite. That was a positive development. However, it required appropriate measures to deal with it. They also recognized the issue of the expense of scholarly journals in less developed countries in the south. The purchasing parity power was not the same as the exchange rate but there was a deep irony there. Some countries whose citizens had to pay higher prices in local terms, were seeking to flood their own market with his work, distributed without payment to him. That caused rather more damage to authors working in their own culture and their own language, than it did to him. Supporting the diversity of authorship was essential, and that meant fair remuneration for authors when their works were made available to the public. The IFJ agreed with the European Union that the issue for the traditional on-site work of libraries and archives was the effective application of existing laws.

91. The Representative of the International Council on Archives (ICA) stated that it aligned itself with the statements made by IFLA. She wished only to add that limitations and exceptions for libraries and archives together had been a separate item on the Committee's agenda since November 2011. During that time, the ICA had collaborated effectively with library associations, led by IFLA. More recently, they recognized the participation of the international council of museums given the many topics of equal benefit to the museum sector. That Committee, with the input of ICA and its sister memory institutions had identified a list of topics, common to archives, libraries and museums that required a uniformed set of exceptions. They would allow all memory institutions to provide access to their collections in a global world. They saw no need to develop separate action plans for each type of memory institution. They urged the SCCR to build on the considerable progress already made, particularly in the form of the former Chair's chart.

92. The Representative of the Karisma Foundation stated that it was a civil society organization that worked in the intersection between rights and technology. It supported and promoted policies, which provided a balanced development of intellectual property rights. They were in favor of incorporating the public interest into international legislation on the topic of libraries and archives. Libraries and archives provided a public service, which enabled them to exercise basic human rights. It was there that they had to pay greater attention and where the Committee played an important role. In poor regions, such as in Latin America, libraries and archives fulfilled an essential role to reduce social gaps and that included digital gaps. However,

those institutions were faced with a precarious legal situation, which basically prevented society to make use of works, which was socially fair and enabled the enjoyment of the right to freedom of expression, access to culture and knowledge. They could hope that at the national level they were promoting those changes and fostering them. They recognized that the work of the Committee was vital so that once they went home, they could really make a difference along those lines. They appreciated that the Committee had demonstrated a desire to have progress on the issue, with the action plan submitted. They hoped that the implementation of that plan would be done through an open and inclusive, participatory process, which developed a binding instrument, and a more balanced system, in favor of libraries and archives in the future.

93. The Representative of the International Authors Forum (IAF) expressed her gratitude to those delegates that had spoken of balanced solutions and the role of authors, in particular, Malawi, Russia, and the Ivory Coast. The IAF represented authors of texts for screen and the visual art sectors. Their members consisted of 59 organizations, which represented well over 600,000 authors worldwide. Authors wanted the widest possible lawful access to their work and recognized the institutions vital to encouraging access for all. While achieving that, a balance had to be struck, to allow authors proper remuneration, to be able to continue their work. They supported pragmatic solutions to that very difficult, but not insoluble situation. In no country were authors able to work and create when they were denied remuneration or inadequately paid. Preservation and encouragement of diversity was essential. Authors believed that a robust set of provisions existed in most countries, including licensing and public lending rights, with sufficient flexibility for countries to work towards library and archives solutions.

94. The Representative of International Council of Museums (ICOM) stated that her colleagues at IFLA and the ICA had spoken with common purpose, on behalf their organizations. She had a brief addition, concerning the extended collection of visual works, such as art work and photography. Licensing solutions might work in certain circumstances, however, museums did not simply hold art works and photographic works in their collections. Museum collections held much more, such as scholarly assessments, curatorial studies, study collections, audio/visual works and primary research materials that were either published or unpublished, such as archives, and libraries devoted to subject matter. In addition, museums also held works that were orphaned. The result was that the museums remained paralyzed in carrying out their mission. Extensive collective licensing might work, but only in certain circumstances and in certain jurisdictions and they did not necessarily facilitate cross-border access. A balanced approach was key. The Representative urged the Committee to achieve a balanced approach to those issues.

95. The Representative of the Writers Federation of Italy (FUIS), stated that it represented over 25,000 Italian authors. In attending the Committee, their goal was to promote the work of Italian authors and to ensure that their rights were protected, in order to make a living from the use of their works. Libraries and archives were extremely important to Italian society and to their authors, in order to make their works widely available and to ensure that Italian language and heritage were preserved. It was vital that the Italian language was preserved and the rights designed to protect the works of individual authors, expressing themselves in Italian, were vital to that. Those rights provided the basis through which authors made a living. They had a good relationship with libraries in Italy. They worked with them to ensure that libraries could do their jobs of supplying rich information to society through the works of authors, and to ensure that the works of as many authors as possible were supplied to libraries. They understood that in many countries libraries felt restricted by copyright and would like further exceptions and limitations. They welcomed the draft of the action plan as a way to constructively discuss the issue of limitations and exceptions for the benefit of libraries and archives, within the existing international copyright framework. However, the existing international copyright system contained within it, sufficient limitations and exceptions to accommodate libraries' needs, through practical solutions such as licensing, while balancing the needs of authors to be fairly

remunerated for any uses of their work. In order to ensure libraries and archives all over the world, and particularly in developing countries, could function as they should, and to assist them to do so, any exceptions and limitations used for their benefit should always account for the rights of authors. In particular, they should support local authors to receive payment for the use of their works, so that they could continue to create and supply libraries with the material that was essential to their existence.

96. The Chair gave the floor to Dr. Kenneth Crews, who had been studying the topic of copyright limitations and exceptions for libraries and archives for many years. He had taken them through almost ten years. Dr. Crews had been present during the previous session of the SCCR, and had been asked to give them an update of his study.

97. Professor Crews presented a report of his, "Study on Copyright Limitations and Exceptions for Libraries and Archives: Updated and Revised (2017 Edition)." The video of that presentation can be found at (Wednesday, November 15, 2017 Morning Session): <http://www.wipo.int/webcasting/en/?event=SCCR/35#demand>

98. The Chair thanked Dr. Crews for his presentation and stated that it had been a masterful overview of close to ten years of work. He opened the floor for questions.

99. The Delegation of the United States of America stated that Dr. Crew's presentation had been extremely informative. It was confident that it would help to inform their discussions on the topic for many sessions of the SCCR. It was impossible to distill the richness of his study and presentation into a few points, but they were struck that he had pointed to moments of convergence in exceptions and limitations for libraries and archives. The Delegation had taken note of the fact that there was movement towards a worldwide recognition of exceptions and limitations for libraries and archives. Only 28 countries had no such exceptions. That was really quite remarkable. It had also taken note of the trend towards more specific exceptions and limitations. At the same time, he had pointed to moments of diversity around the world. That, perhaps, came as little surprise to their delegation and to other delegations, given that the existing international framework allowed countries to adjust rights, to advance specific informational policies, as well as national economic, social and cultural policies. Finally, it noted that the study would be an important complement to the discussion of their proposal on objectives and principles for exceptions and limitations for libraries and archives, document SCCR 26/8. They had covered a broad range of topics that were a complement to his study, including the adoption of national exceptions and limitations, preservation issues, support for research and human development and exceptions and limitations in the digital age. They looked forward to using his study as they continued to discuss that document and evolve it.

100. The Representative of the International Council on Archives (ICA) delivered a joint statement on behalf both of the ICA and the SAA. She expressed their appreciation to the Secretariat for having updated the report and thanked Professor Crews for producing a study that brought clarity to the confusing maze of laws that archivists and librarians had to work with. The word archives occurred frequently in the study, but the public at large often did not understand what it meant to curate archival material. They could accept the fact that the general population did not understand archives, but it seemed reasonable that those who drafted copyright laws should understand that archives were fundamentally about the unpublished legacy of humankind. Yet when looking at the 191 countries in the most recent study, archives were seriously overlooked. Despite whatever improvement there had been for libraries, archives were excluded from 33 per cent of the exceptions for preservation. And from 65 per cent of the exceptions for copying for research. So that raised two questions for Professor Crews. Although his very amazing charts and data appeared to provide a common assessment of library and archives exceptions, why was it that when one read closely and compared any given exception, there seemed to be less commonality? Secondly, what did that

say about whether they really had an international system, or just an unruly array of national laws supposedly addressing the same issues but not actually speaking the same language?

101. Professor Crews thanked the Representative for her questions and careful reading. He continued to learn from her and others. They all saw some different, important things in the information. He answered her questions in part by stating that today they had individual countries making individual decisions. With regards to the nature of their laws and the scope of coverage of their law, it was clear that there were models that lawmakers in all of their countries often looked to and were influenced by. It was also clear that to a certain extent, some agreements and some other arrangements that countries had entered into, had created some obligatory provisions. Think about a group of countries forming a regional agreement that had some relevant provisions. Those were obligatory with regards to each country that had signed on to that. There was also the European Union and the 28 countries that were obliged to follow the laws of the European Union. There were some groupings because of the European Unions' trade agreements and so on. Now, that easily resulted in diversity. That easily meant that some countries, with regards to the Representative's specific point, would include archives in their exceptions. Others would not. Some countries included unpublished works in their provisions and others did not. While there were differences – and the Representative and her colleagues often reminded them of the important differences between libraries and archives - museums would say some of the same things. Between museums and libraries, the similarities probably far outshined the differences. And because many of those institutions were engaged in many of the same activities, and in many of the same kinds of uses of copyright protected work, they had many of the same concerns about orphan works and other provisions. While that did not exactly answer the question, it could send a signal of hopefulness and maybe help with some direction, as they thought about how they could all work together to make the statutes better in the next generation of law making.

102. The Delegation of Chile stated that Professor Crew's presentation had been very enlightening. It asked if they could share their opinion about whether their analysis on libraries, archives and possibly museums within WIPO should be carried out together, or should they be dealt with separately, given the differing functions and objectives. More generally, did the professor think there would be benefits from achieving international harmonization on the issue?

103. Professor Crews thanked Chile and the other countries in its region that had been leaders on addressing many of the issues at WIPO. The Delegate had asked two very complex questions. The first, related to combining the analysis and the approach in WIPO. The difficulty, of course, in answering that question was that, as the Chair had said, it was really up to the Delegates in how they saw it fit to proceed. It would be their decision, and the decision would be based on many more facts and factors than he might be familiar with. But that said, some of the facts could help guide to them as they looked at the data. It was a fact that some 50 or more of the countries identified, and whose statutes were analyzed did already include museums in the mix with libraries. As they noted, not all, but most of them did address archives as well. So, there was a factual basis for thinking about the issues together. And then as a factual matter, although not so much seen in the data, they knew from experience working with cultural institutions, that many museums had many of the services and needs that corresponded with the services and needs of libraries and archives. However, they indeed had units within the museum that were clearly labeled libraries. As a result, there was some reason to think of them together. There were differences. Often, it was their archives colleagues that reminded us that archives were different from libraries. However, the similarities were stronger than the differences. He hoped that provided some insight and guidance that could help to guide the organization. He asked if the Delegate could remind him of the second question.

104. The Delegate of Chile stated that the second question had been what would be the benefit of having international harmonization on the issue, in his opinion?

105. Professor Crews stated that the benefits of international harmonization could be very strong. In that, he thought about the approach that they might take. As they had already heard from many of the Delegates in the conversation, there was a strong desire to have some kind of treaty instrument. There was an equally strong desire not to have a treaty instrument. And so, they could discuss the strategy of a different kind of instrument, or a different kind of approach to the issue. But, of course, the question had many more dimensions than that. When he thought of any instrument, whether it was guidance, or an actual binding instrument, a treaty or otherwise, he did not only think of the question of the type of instrument. Part of answering that question addressed how far as a group, they wanted to proceed with identifying the issues. What was the scope of such an instrument? If the scope was very limited, then perhaps a binding instrument could be arguably most appropriate. If the scope was very broad covering many different issues, services and activities of libraries and other organizations, then it may be more difficult strategically and pragmatically to get to a binding instrument. As a result, they needed to think about the dimension and not only of the type of instrument. That included the scope of the subject matter of that instrument. Another dimension that could make a difference in how to proceed strategically, would be the level of detail. If the Delegate's question had been a little different, and he had asked would it be appropriate to have harmonization at every level of detail, really prescribing a statute, then he and others would surely hesitate. There was the need to leave some room for growth and reconsideration, rethinking certain issues. However, if the instrument outlined some general themes and topics, highlighting some of the most important considerations in developing the law, then maybe they could move towards greater harmonization around a kind of instrument that gave them some room to be flexible, to meet the changing needs in the future as well. He saw it as a complex question that had a few major dimensions to it.

106. The Representative of the Library Copyright Alliance (LCA) stated that one of the most basic library functions was lending books and other materials to users. That lending could implicate the distribution right, or making available the right, unless a country had an exception or an exhaustion principle. Were there any trends that he could describe about how different countries treated that issue, which implicated perhaps the most basic function of libraries?

107. Professor Crews stated that was an important question, which addressed concepts that were most often discussed around the world under the doctrine of exhaustion. The ability of a library to be able to do the most basic service of allowing somebody to borrow a copy of a work, a book or anything else, and be able to take that home and enjoy it. The response to that question was that the trends were really mixed. He suspected that most countries had a doctrine of exhaustion of rights, or what other countries called a first sale doctrine. Once there had been the first sale of the work, that work may be further loaned or transferred to other individuals. While countries had the doctrine, it was not presented as a library statute. It was more of a general doctrine principle of copyright law. As a result, it did not show up in the study because it was not specifically about libraries. But he had seen those statutes. Many of them had some degree of clarity in that they required an action, a first sale, a distribution inside the country. Then, perhaps even the further loan might be limited to that country. However, there were others had an international scope to it that, stating if there had been a first sale or a transfer of that work in anyplace in the world, then it could affect a further conveyance of the work by the library or other party inside that country. So there was a really mixed group. There was ambiguity in the law in the United States of America about international exhaustion, until a case went to the U.S. Supreme Court. They had a ruling there that a sale in another country resulted in the exhaustion of the distribution right in the United States. As a result, there was a tremendous amount of uncertainty about those issues. And very little had been resolved through litigation. If the Delegate were to ask an even simpler question, it was clearly lawful inside most countries for the library to allow people to check out that book and take it home. The answer wouldn't be a statistical one at that point, but he would probably say it was not 100

per cent far from it. The library was allowed to do that. However, it became even less clear if there was an international dimension to the sale transaction.

108. The Representative of the Program on Information Justice and Intellectual Property (PIJIP) congratulated Professor Crews on his study. It was a continuous work of force and it was great to see all the information come out. One way to read the study was that there was a trend towards opening library exceptions to more users and services of libraries over time. The study had also noted a trend towards adding specificity to general clauses. Some of the research that they had presented the previous day indicated that as they looked over all exceptions, the trends toward more openness seemed to be occurring faster in wealthier countries than in developing countries. Additionally, many developing countries tended to have more limiting and more specific provisions, which often caused problems in adapting to the digital environment. The professor had also mentioned a growing gap of some kind as well. Could he explain if in his study, he had found a similar trend towards more openness in wealthier countries at a faster rate than developing countries? When he talked about the shift to specificity from generality, specifically in relation to countries that had the Tunis provision, for instance, did they also retain the generality? Was it adding specifics to generality or was it replacing generality with specifics?

109. Professor Crews stated that in relation to the Delegate's last point, the response was that it was a little bit of a mix. There were countries that had a general provision, and had then added a statute, or a second statute, picking up on some of the specific issues. Consequently, they had done both. Realistically, what had happened in recent legislation, in the last few years, was that some countries that had relied on a general provision had done away with that. They had repealed and replaced it with a set of more specific statutes, on some of the familiar topics that they had already seen. With regards to the Delegate's first point about openness, Professor Crews assumed that he meant, the so-called more open provisions, fair dealing, fair use or any other name of such a provision. There were countries in different parts of the world that had adopted something like an open provision. However, while it was a mixed group of countries, it was difficult to say that there was a clear trend, as the Delegate had described, between developing and developed countries. One reason for that was that if they looked at what was called fair dealing, or fair use in different countries, it varied greatly. As a result, the statute labeled fair use in one country may not look anything like, or have any relationship to what was called fair use in another country. Consequently, they would have to look at that much more closely. On the other hand, they could look at the Delegate's question in another way and ask if there was any kind of trend toward highly detailed specific statutes, and if there was a trend in developed versus developing countries? A part of the answer to that would be that there were a lot of highly developed countries, which probably had some of the longest and most complex copyright exceptions he had ever seen. As a result, in some respects, the most developed countries sometimes had the least open statutes and required the most systematic and rigorous compliance elements. Consequently, there was evidence pointing in a very different direction on the issues that the Delegate had raised.

110. The Delegation of Indonesia observed that Professor Crew's study had included extensive information from a number of WIPO Member States, which had undertaken more extensive reforms recently. That was the reason they had requested the update. Which examples in his mind represented the most comprehensive reforms in response to the changing information environment, and also the changing forms of access to information? A second question would be with regards to the data and facts that he already had in the study, how much closer were they to a situation in which libraries and archives could easily cooperate across borders? Additionally, was there any possibility that the information in the study could be transformed into a database, that could be regularly updated whenever new reforms took place in the Member States of WIPO? It was updated very recently to include all Member States of WIPO. It would be useful for practitioners and all Member States of WIPO.

111. Professor Crews stated that with regards to an updated database he would be very pleased to help pursue those possibilities. It would up to the Secretariat and the Member States to investigate the feasibility of doing that. The Delegates' encouragement and an expression of their needs might be the most helpful in deciding whether that would be a good thing for WIPO to pursue. The Delegate's second point about cross-border activities was very important and had been an important subject for WIPO. If they could find a way to address that one issue, they would have accomplished something extremely important. It was a challenge. He could imagine a cross-border arrangement that would, for example, depend on whether it was lawful for a library to make a copy in country A and then be able to receive it from country B, where the use was going to be in country A. That may be a very reasonable way of sorting out the legal responsibility associated with that work. The second step of the process was similar to the question about the first sale doctrine and international exhaustion. It involved making sure that once the copyright question had been resolved, that it was lawful for the library in country A to make and receive that copy, or receive it from a different country, and that it was also then allowed as an exemption under country A's import laws as well as country B's export laws. As a result, they needed to tie that to the ability to transfer that copy across national borders. Often import and export was a form of infringement. Consequently, they needed to clear that possibility as well. The Delegate's first question was also a very complex one. In effect, he had asked if in examining the laws of so many countries, there were countries that had really set an example. There was no one good way to answer that question, because different countries had some very good ideas that they had incorporated in to their laws. As he had mentioned during the presentation, very few countries had shown innovation about the scope of subject matter. They were still very much focused on some familiar subject areas. As a result, they would want to look to the very few countries that had addressed some new issues. Some of those they had referred to in the discussion included orphan works legislation, fair dealing and perhaps fair use. They had referred to text mining and large-scale digitization at another point. There were those variety of different issues and most of them were in the documents outlining the priority issues for libraries. No one country had addressed a large share of those questions and issues. Of the countries that had addressed the familiar issues, there were different countries that had responded in different ways. However, there were a few easy things he could say. For example, if they were talking about a preservation statute, the place where preservation may be most important was with respect to unpublished works. As a result, a preservation statute that was limited to published works was actually probably missing the most important function of that preservation statute. The reality was that digital technology was probably unavoidable. In fact, what they thought of today as reprographic or other more old-fashioned technology were actually digital technologies today in one form or another. Consequently, statutes that may be limited to non-digital technologies may also be missing the fact that digital technology was probably unavoidable and probably essential for effective library services. He understood the concerns about digital technologies, but those concerns could be addressed in other ways. A closing point he had made and would emphasize was that they were really talking about law for honest people; keeping citizens honest, giving them honest, good standards that they could follow. The respect for the law was very strong, otherwise they wouldn't be having the present meeting. It was an indication of the respect that they all had for the law. Consequently, there was no desire among libraries and archives to see digital files released, abused and misused. A little bit of safeguard would be acceptable and would allow the appropriate technologies to move forward. He knew that was not what the Delegate had expected as an answer, but he hoped that was something helpful



112. The Delegation of Brazil thanked Professor Crews for his comprehensive and rigorous study, as well as for his informative presentation. He commended the SCCR for commissioning the study. It was a clear instance of the Committee fulfilling its responsibility of advancing discussions in a constructive and substantive way, backed up with hard data. The study highlighted the fact that sensible limitations and exceptions could easily co-exist with some of the strongest and most effective copyright regimes in existence anywhere. Indeed, those characteristics seem to be closely interrelated. The study would certainly be widely circulated within Brazil's copyright community and amongst its stakeholders. They would see to it that the study contributed to the ongoing national debate on the topic. Would it be possible to have the study in an updateable online database, where data would be updated in real-time as soon as any changes took place? That would be of great use not only for academic institutions but for all parties involved.

113. Professor Crews inquired if that was a question or a request? He thanked the Delegation for its support and leadership throughout the years on the issue. He also thanked the people of Brazil. The answer was that he thought it would be appropriate to have an updateable database. However, that was a question for the Secretariat the Member States. He would be happy to support that in any way that would be appropriate.

114. The Representative of eiFL.net stated that he had two points. First, more than 50 of the charts had been revised and updated since the last edition of the study in 2015. However, when they looked at the data in more detail, the substantive, actual changes were quite small. For example, since 2015 just three more countries allowed copying for preservation, which was a basic library activity. Just one country had allowed documents supply, which was fundamental to supporting research, and cross-border issues weren't being addressed at all. At that rate they estimated it could take another 70 years, that is until 2087, for the laws of every country just to catch up with the basic activities that were needed by libraries and archives in the present day. Second, in his presentation he had also described a situation of relatively little innovation, uneven application of digital technologies and even increasing de-harmonization. How could they best address that situation, to allow activities in an online cross-border environment, in which libraries in all of their countries presently operated, in a timely and effective manner? Finally, he reminded the Delegates of the compilation of evidence and examples that had been presented by libraries and archives to the Committee, over the last number of years, in a single document, which was entitled, "The Internet is Global but Copyright Exceptions Stop at the Border." If they searched for it online they would find it there.

115. Professor Crews thank the Representative for having gone through the data very carefully. He would respond to the first two points that had been made, because they related to one another and could support one another. First, the Representative's examination and the inferences he had drawn from the data were not at all wrong. He was quite right in noticing that some of the changes were small. However, the Representative should be careful about exactly what he was looking for. In other words, the specific data point he had mentioned was a small number of countries that had added a preservation provision or something like that. The Representative was exactly right. However, that was counting the preservation clauses. A fairly substantial number of countries, probably 30 to maybe even 35 or more, had revised their preservation or replacement provision. In other words, there was a lot of new legislation out there, but it was still addressing some of the same subject areas of the old legislation. That took them to the point that had been raised, about repeating his statement from the presentation. There was relative innovation and one way to measure that was that relatively few countries had broken out from addressing those main long-standing areas of concern. They were important. They needed to be addressed. And that included preservation replacement and copies for research and study. He had highlighted some examples in his presentation. It was rare when countries had gone to new subject areas. As a result, there was a lot of new legislation but it was not giving them new subject area. That was where there was an important

opportunity to provide some guidance. He said that very carefully because he was not prescribing a type of instrument. It was for the Committee to decide whether it would be a treaty, guidance or anything else, that would move all of the Member States to think about and consider enacting statutes, that would move the library exceptions in to some of those new subject areas. That would be a very important development, and WIPO could become a leader in the world in shaping that law.

116. The Representative of the African Library and Information Associations and Institutions (AFLIA) stated that the work of Professor Crews and indeed of WIPO was an invaluable resource both inside and outside of the room. In many countries it was a struggle enough for libraries to provide access to information that users, student researchers and citizens needed, working within the context of current laws. They did not have the luxury of time to understand, let alone to seek to change the overall copyright framework that could help them better serve the public interest. The United Nations SDGs that established access to information as an objective for all governments was worthy of mention there. Making the necessary changes to the law and allowing libraries to do their jobs provided an excellent way of achieving that access. Professor Crews' report therefore provided vital insight into the situation across the African continent. It helped to level the playing field, by developing a broad topology of provisions, and monitoring the changes or lack of changes. It helped to underline the need for greater purpose in reforms. As they had seen with the Marrakesh Treaty, once WIPO acted they saw a notable change in legislation. He had also mentioned the spread of the European Union 2011 dedicated terminal exception, even at a time when users were expected to be able to use their own devices. To what extent did he think that copyright reforms in countries were being motivated and shaped by international events and processes?

117. Professor Crews stated that the question was an extremely important one, about the role of inter-associations, and the answer was clear. International developments were shaping domestic law. He could emphasize that in many different ways, through the participation of almost every country present there in the Berne Convention and then to a slightly lesser extent to the WTO and TRIPS. In particular, an engagement in international agreements that had obligations in copyright, and other areas that came back to shape the domestic law. So clearly signing on to copyright and intellectual property right treaties, and other instruments was a force shaping their laws. There were less tangible examples. He had mentioned briefly the dynamic of learning from their neighbors. They did that in law making in all parts of the world. When they were faced with a need to enact legislation in some area, whether copyright or something else, they looked to their neighbors, trade partners and countries that shared a similar heritage in history, to see what they were doing, to be able to learn from them. They signed local or regional agreements about trade and other issues. And those included provisions. In Africa, the Bangui Agreement, as he had mentioned before, included library provisions. The Cartagena Agreement in South America included library exceptions in its copyright provisions and included copyright provisions. As a result, they had that dynamic as well. And then there was history. He had emphasized that in his presentation three years ago. He had given an example of an African country that was a former British colony, whose laws were very much in the model of the British Copyright Act of 1956, which had been carried over in to that country's law. As the decades went by and that country became more independent, and grew away from the colonial era it enacted its own laws, but it followed yet another international model and the statutes of that country, provision by provision, were very much out of the Bangui Agreement model. Consequently, as he had emphasized in his presentation a few year ago, they looked to international developments for some guidance. Every one of them, in the way that they shaped their laws. It was an opportunity for WIPO to step in and take the leadership role, by providing that guidance in whatever form was appropriate. As a word of caution, if they did not do that, somebody else would. He did not know who that somebody else was. However, it was an opportunity for WIPO to step in and be able to shape the discussion and move it in a way that reflected the interests of the many different views, perspectives and values that were

represented in the room. He hoped they would take the opportunity and move forward.

118. The Representative of Innovarte questioned the quality of the exceptions that had been reviewed. In the research, what countries had been found to have exceptions that were easier to apply? Where had he found the exceptions impossible to apply? There were many exceptions that librarians couldn't apply because they were too burdensome. Second, in addition to studying the laws, he had spoken with many IP offices. As a result, he had a very strong sense of what was happening on the ground. What was the trend? What was reason that many countries did not have exceptions, or had exceptions that were of a bad quality? What was affecting those countries in terms of having exceptions for libraries?

119. Professor Crews stated that it was difficult to specify the reason a country would have a general provision rather than the more specific one. That could be combined with the fact that as he had demonstrated with the data, there was a general trend towards new enactments having specific exceptions. He had a sense that the general exceptions existed because the question of library services and the depth and complication of the relationship to copyright was not seen as either very important, complex or maybe even an economically critical question. As a result, addressing that in a statute early in the legislative process, with a fairly simple statute at least addressed the issue. Additionally, it didn't address it by openly allowing the library to make copies but by allowing the library to make copies within limits, limited needs, limited numbers, limited types of works. As he had shown with the one general statute, the Tunis Model, it also added the language from the three-step test, about acknowledging the normal exploitation and the interests of the rights holder. Consequently, there were limits built in to that statute. He had a sense that that was just a convenient way of dealing with what was perceived as a modest issue. However, with the passage of time the issue had received more attention. They were all there discussing those issues. They had all been discussing them for a decade together, and that meant they were seen as more critical, more complex, with perhaps more interests at stake. As a result, the issue had simply become more complex. He had put a word of caution in his presentation, with regards to the first point, about not making the statutes too complex. Keep them practical. They should keep in mind it was library professionals, archivists and others that were using the statutes, but they were not legal experts. As a result, they needed a law that they could read, understand and apply as a practical matter. There were two ways to make the statute readable and quickly useable. One was to keep the language very, very simple. And that was where he suspected the beauty of the Bangui Agreement model came in. It was probably very compelling because it was two very short, very simple provisions about research and replacement or about preservation and replacement, and about the private copies for research and study. Very simple language. However, the push back against simple language was due to the number of interests that were at stake, and a desire to make it more confined and more limited. Then there was the other model of a useable statute, which was one where there were four, five, six, seven or more separate full lengthy provisions about different types of works used for different purposes. And many of the countries that were former British colonies like his, had enacted that model and had those lengthy sets of exceptions. If the question was did the law detail what may be done? The answer was yes. Did the law provide a challenge to sort through that statute, to make sure one had complied with it in every different way? The answer was yes. It was a serious challenge for library professionals. How did they take those statutes and simplify them? He pointed to one country, Australia that had many exceptions extending over pages and pages of text, all related to libraries and archives and museums. In their recent legislation, they had tightened it up to make it easier to use, and protected the interests of rights holders.

120. The Chair reminded the Delegates that while they were having a very good discussion, there was another agenda item, and Professors Reid and Ncube were due to give them a presentation that day.

121. The Representative of IFLA observed that digital resources represented around 80 per cent of the collections of many academic libraries, and the growing share of the collections of public libraries. Assuming that the objective of their institutions remained valid, which the Representative believed was a subject of consensus, the questions they had heard concerning the applicability of limitations and exceptions in a digital world were welcomed. Looking at the subject, which would be addressed also in the context of two other studies at the meeting, as well as in the context of the Committee's discussions on libraries and archives, how much was there a concern about the failure, of all but a few countries, to prevent contract terms from overriding exceptions, to the relevance of the copyright system in general?

122. Professor Crews stated that there was another dimension to the digital question that Representative had referred to in his opening comments. Digital collections formed a large percentage of library collections. However, it wasn't just a question of making a digital copy, under whatever conditions from an analog work, but it was digital to digital conversions, and how they dealt with the growing collection of materials that were born digital. That was a part of the reality of the context within which they were working. The other point that had been raised with regards to contracts, and the contract override of those provisions, was actually a lot more complex than they might think it would be. He had experienced in his professional work, the importance and the significance of the contract override of those exceptions. He saw that not only in commercial transactions but also in private transactions, which came with restrictions. That was a form of a contract that might be overriding some of those exceptions. So they needed to think that through very carefully and think of the ramifications and implications. It needed to be addressed and some countries had been including it in their provisions. In some countries, such as the United States, it actually went in the other direction, in making sure that the contract was protected. That came out of a common law tradition of the value of contracts and private transactions. Although on the other hand, in recent years they had seen Germany and Montenegro add a provision to their statute prohibiting override, there was the European provision about making available in dedicated terminals, unless otherwise prohibited by a contract. That was a provision which protected the contract, which might otherwise be seen as overwritten by the exception. As a result, it was a multi-variable analysis, but a very important one that needed to be on the short list of subjects that they addressed.

123. The Delegation of Senegal stated that Professor Crews had mentioned the Bangui Agreement on several occasions. Most countries had their own legislation regarding copyright. In his study had he been able to see any asymmetries between the exceptions and limitations in the Bangui Agreement and those in the OAPI national legislation countries?

124. Professor Crews stated that the answer was yes. He could share more data with the Delegation after his presentation. If they looked at the countries that were members of the Bangui Agreement, most of them had no library exceptions in their own statutes. They were therefore relying on the Bangui Agreement as a source of statutes. There were fewer countries that had the general provision or some other provision, and then also had the Bangui Agreement. As a result, there was potentially some conflict. He asked for correction if necessary, but he was of the opinion that if the Bangui Agreement allowed a certain activity and the domestic statute allowed some other activity, probably both of those activities would be allowed under the laws of the relevant country. He thought that was how it would be resolved. Yes, there was some room for possible conflict between domestic legislation and the terms of the Bangui Agreement. He would be eager to talk with the Delegate later about how that might be resolved.

125. The Representative of KEI asked if Professor Crews was asked by the Committee or someone else, if he would be able to draft a model on a specific provision, or more than one provisions on archives, preservation, library lending or some area, would he do that? Could he provide that model, including different options for different legal traditions?

126. Professor Crews stated that would be a difficult question and a difficult homework assignment. However, it would be an exciting challenge to take that up. Assuming they were either doing it as a group or doing it with one country, the way he would begin that process would be to go back to first the list of subject areas, starting with preservation, research and orphan works. Moving from there he would talk through the priorities. He would pick a couple of subjects that were high priority for the country in question. Then he would go to the data that they had in the study to look at the who, the how, the why and the when and say what was the right answer. What could they learn from other countries? What he was proposing was not necessarily to go to the laws of country one, two, three, four and pull that statute. He was proposing to take those ideas and start with those basic questions. Which organization should be able to use the statute? Libraries? Archives? Museums? Or more? What kinds of work should it apply to? There were different answers from different countries, more than that pertaining to published or unpublished works. Some countries excluded legal deposit works. Some countries excluded computer software. Some countries took sound recordings and motion pictures and sent them to a different statute. What worked under the traditions and structures of the country in particular? Then he would go to the charts and begin to pull ideas and then draft the language that captured those ideas in a way that best served the needs of the particular country. They would learn very quickly what was important in the country in question, what worked and what were the priorities. In carrying out the same process with other countries, they would quickly learn from each other. That would be a helpful process.

127. The Representative of the European Bureau of Library, Information and Documentation Associations (EBLIDA) stated that Professor Crews had referred to the European Union's legislation several times that morning. In the impact assessment for the draft European Union directive, the European Commission had explored the degree to which the divergence between European Union Member States, both in terms of which exceptions existed and how they were designed, was affecting the achievement of important policy goals, such as education and innovation. That had been identified as an issue, in light of the fact that technical barriers and information exchange across borders was declining, and their understanding of the benefits of international collaboration was rising. The Commission had decided that indeed that was the case for preservation and text and data mining. What impact did he think the incredible diversity of provisions and approaches that he had identified in his work had had on the achievement of those public policy goals?

128. Professor Crews stated that the Representative was more familiar than he was with the details of the background developments in the European Union on those points. However, he had seen that the data would be helpful in shaping conversations outside of the room, whether in one country or in a group of countries, such as the European Union. He saw it as a helpful opportunity and means to explore what was possible, with regards to the dataset of existing statutes. Consequently, if he was a part of one of the meetings thinking through those issues in the European Union or elsewhere, and they were exploring one of the issues that had been presented, he would go through the data to look at how different countries addressed that point. He would make sure that they looked critically at the specific sub-points within the subject area. He would also make sure they thought through and learned from other countries and chose what made the most sense. That overall balancing equation would include being sure they had a statute that was functional and reasonably easy for smart professionals to read and follow, giving them assurance about moving forward in a most responsible way. Additionally, it should be one that protected the interests of rights holders as appropriate and necessary for copyright law to serve its general purposes. He would begin there, and would begin to look through those very detailed points he mentioned to make sure they had thought through the options as thoroughly as possible.

129. The Chair announced that they had come to the end of the Q and A session with Professor Crews. On behalf of the Members States and everyone else present, he expressed their deep appreciation to Professor Crews, for having come to present his updated study. He thanked him for his work on the topic of limitations and exceptions for libraries and archives. It had been almost a decade of work. The questions and responses he had provided would give them food for thought to take their work forward.

#### **AGENDA ITEM 7: EXCEPTIONS AND LIMITATIONS FOR EDUCATIONAL AND RESEARCH INSTITUTIONS AND FOR PERSONS WITH OTHER DISABILITIES**

130. The Chair opened the agenda item on limitations and exceptions for educational and research institutions and for persons with other disabilities. He informed the Delegates that there would be another presentation by Professor Reid and Professor Ncube, as part of the discussions for the agenda item. He opened up to the floor to comments from regional coordinators and Member States, bearing in mind that some of them had already made comments under Agenda Item 6.

131. The Delegation on Australia delivered its statement on behalf of Group B. Group B continued to recognize the importance of the exchange of experiences, with regards to limitations and exceptions for educational and research institutions. As the studies presented during the previous sessions had described, many countries had already established their own exceptions and limitations for educational and research institutions, which worked well and respected the respective domestic legal systems, within the current international legal framework. The work of the Committee should be shaped in a manner that reflected that reality and complemented the well-functioning current framework. The Delegation observed a similar lack of consensus within the Committee on that agenda item, as was the case with limitations and exceptions for libraries and archives. As a result, it appreciated that the aim of the discussion was to reach a better understanding of the topic. With regards to the working document, it took note of document, SCCR/34/6, which included the Chair's informal chart, used in previous sessions. The Delegation was ready to continue the discussions, in order to explore common ground upon which they could all stand. It highlighted the objectives and principles proposed in document, SCCR/27/8, on the topic of limitations and exceptions for educational, teaching and research institutions. The objectives and principles laid out in the document could complement the Committee's work on limitations and exceptions for educational and research institutions. It looked forward to hearing the presentations on the updated study prepared by Professor Seng on copyright, limitations and exceptions for educational activities, as well as the scoping study prepared by Professor Ncube and Professor Reid, on limitations and exceptions for persons with disabilities other than print disabilities. It would continue to engage in the discussions on those topics, including those on the draft action plan proposed by the Secretariat, in a constructive and faithful manner.

132. The Delegation of Indonesia speaking on behalf of the Asia Pacific Group stated that exceptions and limitations for educational and research institutions and for persons with other disabilities had an important role to play in the attainment of the access to knowledge and education for all. In many developing countries, the actualization of that goal was often hampered due to the lack of access to relevant education and research material. The Delegation thanked Professors Reid and Ncube and looked forward to the scoping study on access to copyright protected works by persons with disabilities. It also welcomed the updated study by Professor Seng on copyright exceptions and limitations for educational activities. The studies, along with the Chair's chart on limitations and exceptions for educational and research institutions in document, SCCR/34/6, provided a pertinent view on the topic. The Delegation thanked the Secretariat for preparing the draft action plans. All documents, along with the draft action plans were a good basis for further consideration in the Committee, to facilitate progress on those very important issues. It hoped that all Member States would engage constructively

on the topic, based on the previous discussions and the new inputs, so that they would be able to continue to make progress.

133. The Delegation of Georgia speaking on behalf of CEBS stated that it recognized the crucial role played by education and research institutions in the development of the society. It supported the discussions on limitations and exceptions for education and research institutions and for persons with other disabilities. As it had repeatedly mentioned, work on a legally binding instrument would not be an appropriate outcome on the topic. Having observed a lack of consensus on the agenda item, it appreciated the discussions towards reaching a better understanding of the topic. It thanked Professor Seng for his work on exceptions and limitations for education and research institutions. It also thanked Professor Blake Reid and Professor Caroline Ncube for the scoping study on limitations and exceptions for persons with disabilities. It looked forward to hearing the presentation of both studies with special interest. CEBS also looked forward to hearing more about the projects, as well as facilitating access to educational materials and learning modules. It took note of the draft action plan for limitations and exceptions prepared by the Secretariat. The discussions on the current agenda item would be most useful if they focused on an exchange of best practices.

134. The Delegation of Senegal speaking on behalf of the African Group referred its general statement, which had made that morning when the issue of exceptions and limitations had been opened for discussion. That statement also applied to education and research institutions, as well as persons with other disabilities. The African Group recognized and acknowledged the role of copyright and the need to provide exceptions and limitations for educational and research institutions. There was a need, of course, to have a balance between private rights and general interests. Limitations and exceptions in that area contributed to promoting universal access to knowledge and the attainment of the SDG Goal 4, which stipulated that everyone should be guaranteed the access to good quality education, on an equal footing with others, and have the possibility of access to lifelong learning. The Delegation noted with interest the presentation of the updated study on exceptions and limitations to copyright in favor of educational and research institutions and the exploratory text on print and reading disabilities. It thanked Professors Reid and Ncube for what would be useful and interesting contributions. In accordance with the Chair's summary at the previous SCCR session, the Delegation would continue to show a constructive attitude towards the ongoing work and remained optimistic that there would be consensus, as a result of future work, especially in light of the action plans prepared.

135. The Delegation of the European Union and its Member States continued to attach importance to the topic discussed under the current agenda item. It supported the work on how the international copyright system could properly support people with disabilities in the analog and digital world. In that regard, the European Union and its Member States welcomed the work carried out by Professor Seng on exceptions and limitations for education and research. It looked forward to hearing about the finalized scoping study on limitations and exceptions for persons with disabilities other than a print disability, undertaken by Professor Blake Reid and Professor Caroline Ncube. It was equally looking forward to hearing about the result of the collection of data and information related to limitations and exceptions for museums. The European Union and its Member States had listened with interest to the Secretariat's action plans. It was important that WIPO Member States maintained a certain degree of flexibility in that field, which was particularly relevant, in view of the different legal systems across WIPO's membership. Licensing also played an important role, either alongside the application of exceptions, or instead of the application of exceptions. For those reasons, working towards legally binding instruments would not be necessary or indeed appropriate. The discussions on the agenda item would be most useful if they focused on exchanging best practices. Lastly, the Delegation reiterated that the work undertaken by the Committee on the subject could have a meaningful outcome only if the Committee shared the same understanding of the starting point

and the objectives of the exercise.

136. The Delegation of Brazil inquired if it could make a statement regarding the draft action plan.

137. The Chair stated that the Delegation would have an opportunity to do so the following day.

138. The Delegation of Brazil thanked Professor Seng for his updated study. It provided valuable elements for an objective discussion of the subject. It also illustrated that many of the limitations and exceptions that were demanded were enforced in countries known for the effectiveness of their copyright protection system. A healthy copyright system, that really considered limitations and exceptions, provided a more effective and sustainable protection to rights holders. As had been mentioned, first they needed the production and generation of knowledge so that they could disseminate it. The Delegation encouraged the sciences and the arts. It would present some additional thoughts when the time came for discussing the study.

139. The Representative of Communia stated that Professor Crews' study had reminded them that a strong solvent copyright system needed social legitimacy, and that social demands would not wait for legislation. In the past several years they had heard several civil society organizations position themselves against agreements that were perceived as unfair, because they were not balanced when it came to copyright. On the other hand, all over the world students, teachers, researchers and citizens in general committed daily infringements of copyright, in order to get access to knowledge and education. That would not benefit the copyright system. The SCCR would not defer to national laws when deciding to provide authors with reasonable oversight for the protection of their interests. It seemed deeply unfair to them that when it came to users' rights, those Member States that benefited from sophisticated copyright exceptions and limitations refused to move towards convergence in the laws, suggesting that Member States should be given the freedom to decide whether to implement provisions that protected the public interest, such as access to knowledge and education. Several studies had been made in the past years with regards to everyday educational practices. Unless the copyright laws of Member States were substantially amended, the global educational community would be stuck with laws that would continue to curtail educational practices at various levels. They knew that educational policies were local and that the markets for educational materials had local characteristics. However, they also knew that the needs of educators and learners in terms of having access and using copyrighted works for educational purposes were the same everywhere in the world. They had to stop using the narrative that education was local and properly address the issue at an international level. As they spoke, the European Union was considering adopting a mandatory exception for educational users that would harmonize the laws of 28 European countries, despite their different traditions and local specificities. They were showing the world that agreeing on a minimum standard was possible, while still taking in to account local specificities. Therefore, they urged the Committee to fulfill its mandate. It should address the limitations copyright law placed on education, by agreeing on an action plan that was focused on reviewing existing and future international legal provisions, which could serve as a model for harmonization in that field.

140. The Representative of the Karisma Foundation observed that when they thought about education, they were really thinking about the desire to learn and the desire to get new knowledge, to promote their professional and intellectual development, as well as the need to share that knowledge. They needed to have flexible copyright in the area of education, but teaching practices, and the needs of researchers in digital areas urged them to re-examine the issue and find an international solution to the existing problems. The international educational community was coming up against problems, which led them infringe copyright and engage in illegal activities, at least from the point of view of copyright. That was particularly the case when they talked about education provided over the Internet. That situation could lead to unthinkable



situations, which would have considerable consequences, given to the perverse nature of the system. The Representative stated that in Colombia they had seen one the most irrational examples of that one could imagine. Diego Gomez, a young biologist in the provinces, dealing with conservation, who was a graduate a few years ago, was now on trial and could be sentenced to three or four years in prison. He had been fined because he shared a Master's thesis prepared by another biologist over the Internet. It was available in printed form in the library of a public university, where the author had completed his Master's degree. Studying sciences in regions, which were remote from major cities or the capital, was already difficult enough for any Colombian student without that kind of problem. That was because very often libraries did not have the resources they needed to pay thousands of dollars to get access to basic bibliographical databases around the world and academic works. That undermined the work of teachers, researchers and students who were outside the major urban areas. There were quite a few cases of that kind. In addition to that, many University professors had not been able to get their students up to the doctorate level because of that. They had tools that had helped them to know that there was a digital divide between the major cities and the remote areas of their country, as a result of limitations and exceptions. The problem of the Internet was threatening the professional career, which Diego Gomez had developed for himself at such a cost. That kind of issue was a major one. It should be tackled by a forum such as WIPO, in an open-minded spirit, trying to find a way to achieve a binding instrument. It would make it easier for those in education and research not to face that kind of problem.

141. The Chair asked the speakers to try to keep their statements within a short period of time, as they wished to move on to the presentation by Professor Reid and Professor Ncube. Their full statements could be submitted to the Secretariat.

142. The Representative of Innovarte observed that Article 30.3 of the Convention on the Rights of Persons with Disabilities of 2006 provided an obligation upon its Parties, to take all appropriate measures, to ensure that intellectual property rights were not a discriminatory and excessive barrier, in the way of people with disabilities getting access to cultural artifacts and information. In spite of the Marrakech Treaty, there were millions of people with disabilities worldwide who needed particular technologies to help them to get access to that information. There was an unacceptable legal situation. According to the Worldwide Union of Deaf People, due to that situation, 70 per cent of its members that lived in developing countries did not have access to education. The discrimination in the denial of access to culture for such people had to be brought to an end. Therefore, the Representative respectfully but urgently demanded that WIPO Member States established annex to the Marrakesh Treaty, to apply the provisions they needed in order to deal with the situation.

143. The Representative of Education International (EI) stated that it was a global association of education unions. It had more than 32 million trade union members and 400 organizations in 170 countries and territories. They had common concerns. One of them was that far too many teachers, researchers and students did not have affordable access to the materials they needed to provide quality education. They needed to address the challenges that had been noted in UNESCO's 2030 framework for action, which provided guidance to governments on how to achieve SDG Goal 4, on inclusive and quality education for all. It repeatedly stated that qualified and trained teachers needed to have access to appropriate books, other learning materials and open educational resources. EI advocated that United Nations agencies worked collaboratively to achieve the SDGs. As a specialized United Nations agency, WIPO had an important role to play in achieving SDG Goal 4 in particular. It could do so through the work of the Committee on limitations and exceptions, to establish a normative agenda for education, which balanced the rights of creators and users using materials for noncommercial, educational and research purposes. That should also include the consideration of an appropriate international legal instrument on exceptions and limitations for educational purposes. Particular attention should be given to making copyright regimes fit for the digital age. Education unions in

particular were concerned about increasing use of digital locks that restricted the use of exceptions. In many countries, there was insufficient legal clarity in terms of what students, teachers and researchers needed to consider when sharing or creating digital materials, and working collaboratively in cross-border settings. A common feature of education today. It would be essential to involve educational stakeholders such as teachers, student, researchers, education unions and other civil society actors. An inclusive and transparent process would not only contribute to developing an international framework that made sense for education, but would also create ownership and increase the chances for success in national implementation. EI was there to share their experiences and to offer their support in an important endeavor.

144. The Representative of IFJ stated that a previous speaker had made reference to the legitimacy of copyright. Delegates needed to remember that in the digital age, hundreds of millions of people were published or broadcasted as authors or performers. And many of them were school students. He had personally encountered those who wrote eloquently online on the opposition against copyright, until their work was used in a context, which they did not approve. Those were the so-called moral rights, which were rights of every citizen. In the context of education, Lauren Duffy, who was present in the meeting, had suggested that encouraging school students to assert ownership of their own works would contribute immensely to the legitimacy and reasons for copyright and authors' rights. The work of professional authors remained a major raw material for education. The Representative believed that teachers needed to be properly paid. Relying on underpaid teachers could have serious effects on the quality of education, as could be relying on works that were sponsored or written by people who were enthusiastic about a cause more than about education. As had been said previously in the Committee, the solution was to raise funds to do education properly, to use fair licensing schemes, including collective licensing, and to work on capacity building, to ensure that such licensing schemes were available worldwide north and south.

145. The Representative of KEI noted that the Berne Convention had a standard for education exceptions that was different from how the three-step test was framed in the Berne Convention. In the WTO agreement and the TRIPS Agreement, when there was a specific exception, the specific exception was an appropriate standard and the three-step test came into play when there was not a specific or a particular exception. That was also the view that what was expressed in the Diplomatic Conference in 1967, when the three-step was introduced and the education exceptions were modified. It might be a good idea to have a more technical presentation about the relationship between the three-step test and the education exception. Publishers had come up with the three-step test as part of the "Ten Commandments", or something that was a part of their DNA that could not be questioned. It was a relatively new thing in the area of copyright, and it was not the appropriate standard for education. During the side event the previous day, it was mentioned that Dr. Manerest did some work in developing distance education programs in Malaysia. They knew that the role of videos was quite important. It also related to those with disabilities, in the sense that the Marrakesh Treaty had those sorts of boundaries that had to do with audiovisual content. However, people who were blind might need access to material that was presented in a video format for basic training and professional certification. Generally speaking distance education should be developed as cross-border platforms, because they provided real opportunities to really expand learning around the world. Having some harmonization on exceptions relating to education, was quite important in the distance education area. Finally, the Annex to the Berne Convention of 1971 was about education and it was considered a failure. To the extent that one was talking about access to educational materials, and exceptions in developing countries, it would be a good idea for someone to make a presentation to explain what the 1971 Annex was supposed to do and what it actually did. If it had failed, and they believed it had, why did it fail? That could guide them on any forward-looking work to be done. If they had already made a mistake of historic proportions in 1971, in the Berne Convention that dealt with education in developing countries, they did not want to repeat that mistake going forward.

146. The Representative of the LCA stated that as they heard the presentations on exceptions and limitations for people with other disabilities, they should remember that it was not an issue that only affected other people. It was an issue that could affect them all. In the context of the Marrakesh Treaty, the SCCR recognized that the community of print disabled people included not only blind people, but also people whose sight deteriorated as they aged. People with hearing disabilities, for example, included not only deaf people, or people who were born deaf or acquired deafness as young people, but all people whose hearing deteriorated as they grew old. It was an issue that already affected many of their parents and may affect many of them in the room.

147. The Representative of the Health and Environment Program (HEP) spoke of the experiences in Cameroon. Cameroon was a Central African country that needed education at the primary school and university level. There were a large number of people with disabilities in rural areas, as compared to those in urban areas. There were two million people who suffered from a disability. Ensuring that there was access to education for people with other disabilities was vital. According to the legislation, a person with a disability was defined as having a congenital, physical or mental disability. That was in comparison to an able-bodied person. They needed to reinforce legislation in Cameroon on copyright so that it was properly applicable to its aims.

148. The Representative of PIJIP stated that it also represented the global expert network on copyright user rights, which was a network of copyright academics that included 30 countries around the world. The goal of the education agenda at WIPO should start with the goal of making educational exceptions useful, in all countries in the modern digital era. As Professor Seng's study had shown, teachers lacked the right to show a film, or stream or file or to even excerpt an essay through digital means. Earlier that day, the user rights network released a statement of principles on copyright balance for trade agreements, many of which could be applied in the Committee as well. That statement called for international law to promote copyright balance, through a few key means; protecting and promoting copyright balance, including fair use, providing technology enabling exceptions, such as for transmissions and text and data mining research, ensuring legitimate exceptions for anti-circumvention, such as to adapt material for educational uses, and through guaranteeing proportionality and due process in copyright enforcement, including through liability safeguards for noncommercial uses, such as for educational uses. The Representative joined the call that had been made by Group B earlier in their statement, for a renewed discussion of the Chair's informal table. He also joined the call for renewed discussion of the provisions of the 2013 African Group proposal in SCCR/26/4 Prov.. He further supported the mandate of the General Assembly to the Committee, to explore common ground for future normative work.

149. The Representative of the International Federation of Reproduction Rights Organizations (IFRRO), stated that it represented 149 collective management organizations in the text and image sector, in 78 countries, of all stages of development and all legal systems. The IFRRO emphasized the importance of socially relevant learning materials at a local level, which could only be developed at the local level. He also underlined the importance of access to learning materials, both in the classroom and across borders. In IFRRO's view the simplest and most convenient way of achieving those twin objectives, was by licensing, either directly or collectively. It enabled access, and remunerated rights holders, authors and publishers. It also continued production and publication of cultural learning resources. IFRRO supported the project outlined in the draft action plan, in particular, the proposed study on digital issues in the classroom, including identifying possible areas for development and improvement at the international level.

150. The Representative of Creative Commons stated that it worked with educators, students and authors who used creative commons open licenses to create open educational resources, which were free to share, update and translate. Many institutions and foundations had invested in the creation of those open educational resources, with the goal of increasing access to high quality educational materials. However, while those original materials were under an open copyright license, there were gaps under those licenses. They needed to include quotations, illustrative materials and other reference materials from existing copyrighted content. As had been noted by his colleagues from the library community in the discussion that morning, gaps in limitations and exceptions from country to country limited the ability to share those open educational materials across borders, due to uncertainty about the status of copyrighted illustrative material. In order to allow collaborative and innovative teaching and learning practices, with those open educational resources, they needed a normative approach to limitations and exceptions for education, so that teachers had the opportunity to contribute to and benefit from open resources.

151. The Chair thanked the representatives for their comments and statements. He also thanked the Member States and regional coordinators. He stated that he appreciated everyone's understanding that they kept certain efficiency parameters, to allow the presentations from the professors to proceed. With that, he expressed his great pleasure at welcoming Professor Blake Reid from the University of Colorado and Professor Caroline Ncube from the University of Cape Town, back to the SCCR. They would be joined by Professor Seng, as well as the students who had been with them in May from the Technology Law Clinic, at the University of Colorado Law School.

152. Professor Reid, his students and Professor Ncube, presented their report, "Scoping Study on Access to Copyright Protected Works by Persons with Disabilities." The video of that presentation can be found at (Wednesday, November 15, 2017 Afternoon Session): <http://www.wipo.int/webcasting/en/?event=SCCR/34#demand>

153. The Chair thanked the presenters and moved to the Q&A session.

154. The Delegation of the Islamic Republic of Iran expressed his heartfelt gratitude to the professors for their valuable study and interesting presentation. Based on the findings of their study in different countries, were all kinds of disabilities other than print disabilities covered by one single legislation or by different legislations? Additionally, what was the effect of the adoption of the Marrakech Treaty and its entry into force on the development of the limitations and exceptions regimes for persons with other disabilities at the national level?

155. Professor Reid stated that with regards to the second question, as he had alluded to in the presentation, he did not think they had enough data to draw any broad-based conclusions about that. However, he did think they could say that they had seen implementations that were pretty close to the provisions of the Marrakesh Treaty. In other words, they had seen the focus strictly on people who were blind or visually impaired and people who were print disabled, as well as some implementations of the Marrakesh Treaty that went beyond that. They did not have answers with regards to broader trends at that point. However, in a qualitative sense they had seen both approaches.

156. Professor Ncube stated that with regards to the Delegate's second question, one of the questions they had asked the Member States pertained to their future plans. Did they intend to modify their laws? That had been the fifth question on the questionnaire. Some of the responses that they had received was that some Member States were planning to modify their laws to go beyond Marrakesh. So that was a bit more detailed. The first question pertained to legislation, and whether there was one statute that provided for those limitations and exceptions. The answer, once again, was that it had to be nuanced. It couldn't be too generalized because of the small sample. However, she would say that most copyright law did provide for that. However, they had also looked for accessibility laws. As a result, there were other laws that they looked at. Consequently, in a word it was not one statute. It was a copyright statute and some other accessibility law.

157. The Chair stated that he would put the Delegations who were asking questions on the spot, especially if they had not given their responses to the professors. They had said a small sample size didn't allow them to draw as many inferences or conclusions as they'd like to. He used that as a chance to encourage countries that had not yet submitted their responses to the requests to do so.

158. The Delegation of Ecuador stated that Ecuador had responded to the questionnaire. It thanked the professors for the important presentation. The Delegation was interested in learning how the criteria of different legislations were viewed, in terms of implementing exceptions and limitations. Also, with other very different types of disabilities, what technological means did Member States have to provide access to people with other disabilities?

159. Professor Ncube stated that if she had understood the question correctly, the Delegate seemed to be asking what technologies did Member States have to actually render accessible formats? The answer to that was that it did not appear to them that Member States were undertaking that work themselves. It seemed to be that there were third parties that were undertaking the making of the work. As a result, it was difficult to answer that question in relation to the technologies that the Member States had. It was easier to think about how the Member States were catering to, or providing for the different technologies. They had found that there was diversity in the approaches. Some Member States only catered to very limited technologies, whilst others had a somewhat expansive approach.

160. Professor Reid stated that it was worth highlighting that while copyright exceptions and limitations were really important, in both contexts, where there was a state accessibility law, and in the context where there was not one that was applicable, the copyright limitations and exceptions did not guarantee accessibility. As a result, they required third parties to take advantage of them where there didn't exist a mandate, or they required some sort of mandate from the state. The mere existence of the exceptions and limitations did not necessarily overcome the economic barriers to someone being able to take advantage of them.

161. The Delegation of the United Kingdom wished to clarify its contribution to the study. Reading through the study they had made some mistakes in the information they had submitted. The Delegation wished to provide updated information. For the record, the United Kingdom had updated its legislation in that area in 2014. At the time, the legislation only covered exceptions for people with visual impairment, or subtitling for deaf people. They had updated it to be applied to everyone with a disability, which prevented access to works. It also applied to all types of works and all types of technology, to the degree that it was necessary. There were various safeguards to ensure that the exceptions also protected the interests of rights holders. The Delegation would be happy to provide further information.

162. Professor Reid thanked the Delegate and stated that they would be happy to follow-up offline. They welcomed any corrections, updates or additional information.

163. The Delegation of Brazil thanked Professor Reid and Professor Ncube for the illustrative and intellectually useful scoping study that they had provided. Its question was in relation to the United Nations Convention on the Rights of Persons with Disabilities (CRPD). It had seen that in the recommendations for further study, they had stated that they should study the relationship between the implementation of the Marrakesh Treaty and the CRPD, to provide a more complete understanding. To what extent had the Member States mentioned the Convention as an element to guide or illustrate the implementation of the exceptions and limitations in the national legislation. Lastly, the Delegation joined the Chair in urging other Member States to provide answers to the questionnaire. It was very useful in the analysis of the process of legislative discussions in their countries.

164. Professor Reid stated that the questionnaire did not specifically address the issue of the CRPD. That had been their understanding in a broader sense. The understanding was that in implementing the CRPD, or an existing legislation that was consistent with the letter and the spirit of the CRPD, there were countries that had imposed obligations on various parties, to provide accessibility measures, such as captions for audiovisual works or audio description. That required the transformation of educational materials, including books and audiovisual works of various sorts, for people with all sorts of different disabilities, who required accessibility in employment settings, or had required accessibility in software. As a result, they had not addressed it too much in the presentation. An additional angle was that in the attempts to make software accessible, they were often trying to interoperate accessibility features with software. That might have intersections with the circumvention measures of a particular country or just more basic exclusive rights. It was their sense that some of the Member States had approached it. However, they did not have any reasonable and comprehensive data, and that was something they would like to explore in future iterations.

165. The Delegation of Chile thanked the Secretariat and the professors and the team for the preparation of the great study. Exceptions and limitations for persons with other disabilities were certainly fundamental in the regulation of a balanced IP system. It was important as a steppingstone to move to address what was happening to those with other disabilities. They needed tools to examine the study. The categorization of disability, as well as categorization of types of works and providing access would be helpful. As one of the Member States that had responded to the questionnaire, the Delegation was very interested in what would be done with the results of the study. It called on other Member States and invited them to respond to the questionnaire when they were able to answer those questions.

166. The Delegation of Botswana thanked the Secretariat and professors for the study, which was quite enlightening. It looked forward to its finalization, so that they could continue to inform them about how to move forward, in terms of limitations and exceptions for persons with other disabilities. The report had suggested that the findings were limited or focused more on the responses that were being given by Member States. It did not reflect a reflection from the professors on legislation by the Member States that was required. The Delegate was not sure if it was within the scope of the assignment, but asked if at some point in the future they would see a comparison of the limitations and exceptions in various countries, where they existed?

167. Professor Ncube stated that in the following stages of their work they would attempt to undertake organic research of their own, similar to the nature of the research that had been undertaken by Professor Crews. However, their analysis would be somewhat limited, because they would look at laws beyond copyright. As a result, to that extent, they would require some input from the Member States. However, they would certainly go through the copyright legislation of the Member States on their own.

168. Professor Reid stated that where possible, and to the extent that Member States were inclined, he would like them to provide that information in their responses to the questionnaire. They were interested in development of case law in that area. For example, in the United States of America, there had been a decision in the Hope Trust case, which had applied the principles of fair use at that very intersection of positive accessibility law or positive accessibility requirement and concerns over copyright infringement in a large body of work. Consequently, for countries that had exceptions and limitations that were more general and not specific to disabilities, it would be helpful to understand how those general exceptions and limitations had been applied in that context, to the extent that they had.

169. The Representative of KEI inquired whether if in relation to further recommendations in the Committee's work on persons with other disabilities, they could reflect on the language in document, SCCR18/5, which was a proposal submitted in 2009 by Brazil, Ecuador and Paraguay. Would they see if that could cover the Committee's work? The Representative read the language, "Contracting parties shall extend the provisions of this Treaty to persons with any other disability, who due to that disability need an accessible format of a type that could be made under Article 4, in order to access a copyrighted work to substantially the same degree to a person without a disability."

170. Professor Reid stated that he was reluctant to respond too definitively without having had a chance to examine all the provisions more directly. However, he thanked the Representative for the suggestion. The way in which he had presented that language, struck him as a plausible approach to addressing some of the intersection of disabilities, copyrighted works and technological measures of providing accessibility that were not covered. They appreciated the suggestion.

171. Professor Ncube stated that the Representative had mentioned that in Many and she had agreed with him. At that stage they had considered in the Plenary and perhaps outside the Plenary that they did not want to prescribe to Member States how to take things forward. One possibility, as had been said earlier, was perhaps to consider a joint recommendation, for example, that implored Member States to think about voluntarily incorporating similar language that they found in Article 15b of the SCCR/18/5 text. That was one thing they had spoken about. She thanked the Representative for putting that back on the agenda. She hoped that as they went forward, the Member States would seriously consider that as an option.

172. The Representative of the LCA, hoped his question wouldn't be too easy. They had noted that quite a few countries provided exceptions for all disabilities. Had they noticed a pattern, whether at the regional level or at the level of development? Was the answer that the survey sample was too small? The Representative was curious to know if there was any pattern that was discernible among the countries that provided exceptions for all disabilities?

173. Professor Reid stated that he regretted to return to the answer that had been given to several of the questions, which was that he was not sure they had enough information to answer that. However, once again that was on their list of the types of conclusions they would like to be able to get to them.

174. The Chair thanked Professor Reid and Professor Ncube, as well as their assistants for having shared their study on the limitations and exceptions for persons with other disabilities. To respect them and the work they were doing, he urged as many colleagues as possible to pass their inputs to the professors, so that they could get as much information as possible.

175. The Chair concluded their work for that day. He stated that there was an announcement from the Secretariat.

176. The Secretariat informed the Delegates that there would be a screening of the film, "The CEO", that evening. It was a Nigerian crime thriller. Before that, there would be a reception outside, to which everyone was invited. After the film screening, there would also be a question and answer period with the producer. They hoped everyone would be able to participate in those events. Additionally, the preliminary list of participants had been available that week. They would very much appreciate it if they would send any comments on it to the Secretariat at the [copyright.mail@wipo.int](mailto:copyright.mail@wipo.int) address. They could also hand them their written corrections or additions so that they could get the final version out by the end of the week.

177. The Chair informed the Delegates that the following day, they would begin at 10 o'clock with a very interesting movie on the implementation of the Marrakesh Treaty.

178. The Chair informed the Delegates that they would move on to discuss limitations and exceptions for educational and research Institutions. One of the highlights that morning would be the presentation by Professor Seng, his fellow countryman, who was from the National University of Singapore, the Chair's alma mater. He was pleased to inform them that Professor Seng was there in person in order to present the result of his work, which was also available in document, SCCR 35/5 REV. The work was over 1,000 pages long. They would also have a chance to have questions and answers after his presentation. Before they began the presentation they would show a video on the Marrakesh Treaty. He invited the Secretariat to give a short introduction and explain the context behind the video.

179. The Secretariat stated that the Accessible Books Consortium was pleased to be able to show them a video about a capacity-building project in Argentina. The project in Argentina showcased their multi-stakeholder approach. In the video they had included all the relevant stakeholders, which included non-governmental organizations, the association for the blind, publishers and the government.

180. The Chair thanked the Accessible Books Consortium and the Secretariat, which had helped them to screen that very moving and heartwarming piece about the lives of visually impaired people in Argentina, hoping to move in a coordinated manner to implement the Marrakesh Treaty. Would the film be made available on the WIPO web site? Speaking in his capacity as a copyright regulator in Singapore, and not as Chair, he stated that he would love to show that to his community. Was it available on a web site or YouTube somewhere?

181. The Secretariat stated that the film was currently available on the Accessible Books Consortium web site, [www.accessiblebooksconsortium.com](http://www.accessiblebooksconsortium.com).

182. The Delegation of Argentina thanked the Secretariat for the support that they had provided to them in producing the video, and all of the work that they had done for the implementation of the Marrakesh Treaty. For Argentina, it was a very important topic and they hoped to continue their cooperation.

183. The Delegation of Mexico reminded the Member States that the Marrakesh Treaty had come into force internationally on September 30, 2016. The main point, which they should be considering was how they could get all WIPO Member States to accede to it. The core of the Treaty was the cross-border exchange of books. The more countries that had actually acceded to the Treaty and had implemented it, the greater the volume of books that would be available to people with disabilities. As a result, it was really very, very important that they stepped up their efforts to get countries to accede to the Treaty, which was the very first copyright treaty including a human rights component.

184. The Chair asked if there were any other countries that wished to speak in reaction to the video. As there were none, they moved on to the presentation by Professor Daniel Seng. He



welcomed Professor Seng on behalf of the Member States to the SCCR.

185. Professor Seng presented his report on “Updated Study and Additional Analysis of Study on Copyright Limitations and Exceptions for Educational Activities.” The video of that presentation can be found at (Thursday, November 16, 2017 Morning Session): <http://www.wipo.int/webcasting/en/?event=SCCR/35#demand>

186. The Chair thanked Professor Seng for the comprehensive overview and the summary that helped them to understand some key, salient points of the study.

187. The Delegation of Brazil stated that Professor Seng was the world's leading expert on exceptions and limitations. The study was a repository of important information for countries from very different regions and backgrounds. The Delegation had two questions for Professor Seng. First, the study included information from a number of countries, which had undertaken more extensive reforms recently. Which examples represented the most comprehensive responses to the changes in the digital environment? They had seen the impact of digital technologies in the way students and teachers alike used works for their educational purposes, and also in the way that publishers acted in the market. The Delegation would like to hear from the professor first on that front. Second, to what extent had countries with more flexible copyright provisions been able to keep up with new uses and forms of providing education and distance learning activities, for instance, with regards to the use of YouTube videos in classrooms and the use of materials in class, et cetera?

188. Professor Seng stated that one of the limitations of the study, which was a reflection of the amount of resources at his disposal, was that when he examined the provisions in the Member States' legislation, he did not have the full context in which the provision had arisen. For instance, he would really love to read about the legislative debates and policy imperatives that had driven the changes and reforms to the various pieces of copyright legislation around the world. Being a one-person team one could imagine that it was a very big project and there was a limit to the resources at his disposal. He was not sure if he could really do justice to the Delegate's first question, when he had asked about his impressions, as to which countries had the most extensive provisions that dealt with education and limitations and exceptions. With regards to the second question about flexibilities, he had seen two general broad categories adopted by Member States, which should come as no surprise to them as well. There were Member States that had updated limitations and exceptions very, very regularly. Taking Singapore as an example, he noted that they had a particular component in their law that allowed them to create new limitations and exceptions pertaining to TPM and the Rights Management Information (RMI) flexibilities by way of subsidiary legislation. That was like a truncated legislative process for creating on-the-fly limitations and exceptions and flexibilities, where the technical circumstances required it. It had been inspired in part by the U.S. 1201 approach to TPM and RMI, via the copyright order produced by the U.S. Copyright Office. That was a way to keep up with it, to have an aggressive, proactive, quasi-legislative process for dealing with the changing landscape. The other was to have very broad, all-encompassing provisions. The United States of America's fair use approach, came to mind as one of the specific examples. Consequently, there were two general ways in which one could adapt, to keep up with new ways of using materials for educational activities. Additionally, the point was that education activities could take so many different forms. For example, ten years ago, before they had the issue regarding cybersecurity, probably very few institutions of higher learning in any university in the world would probably want to have a class on cybersecurity, hackings and cybersecurity research. In that day and age, when cybersecurity was an imperative for countries to be on top of the problem regarding breaches in the digital environment, institutions of higher learning were really forced to look into the way in which they could impart knowledge about security to its professionals in computer science. Exceptions that were not even on the horizon ten years before were suddenly very, very important, even from an educational

perspective. The last thing they wanted to do when they were researching a cybersecurity breach was to go through an entire complicated process of seeking permissions to study the security of a device, because security moved so fast. Security breaches had to be responded to almost instantaneously. Exceptions based on one of the two approaches he had spoken of, really helped educational institutions in much of the agenda that drove institutions of higher learning.

189. The Delegation of Indonesia stated that the study was a resource for its country. In Indonesia, the activities related to updating and revising the laws was continuing work. As a result, the study would inform practitioners in the country about the kind of laws and regulations that were best suited under that matter. The Delegation was interested in at least two topics in the updated study. First, according to the findings, they had seen that there was only a fraction of Member States with 22 provisions and 15 Member States that protected limitations and exceptions from contractual author rights. He had suggested that that was a subject that could be further explored. Could the professor elaborate a bit more on that suggestion? The second question was pertaining to the digital world. Considering how easy it was for a teacher, student or those that were active in the educational world to infringe on copyright laws indirectly, especially in the digital environment, did he think it would be appropriate for Member States to absolve educational institutions from infringement? They noticed in the study that at least a third of WIPO Member States had provided limitations and exceptions with regards to TPMs. In a time when educators and students expected to have access to digital educational resources, did he think it was appropriate to prevent users from circumventing TPMs, in order to legitimately access and use protected works under educational exceptions?

190. Professor Seng noted that with regards to the first question about the 22 provisions regarding contractual rights, it was worth studying that further. His approach could not be exhaustive. As he had explained, many of the countries had general rules that dealt with that particular problem. For example, the common law approach to the public policy test could very well intervene, to render unenforceable and void, many of those terms and conditions that attempted to encroach on limitations and exceptions that were in statutory form. On that particular point, his study could not include a complete analysis, as that would take them totally outside of the realm of copyright law. As a result, he had said it was worth exploring that further. However, he would request further guidance from the Secretariat on that particular point. That was the reason he had said that it was only the first step to the overall understanding of the issue. On the second point, about indirect infringement, it was worth noting that the concept of indirect infringement was not uniformly accepted in the national legislation of Member States. Where indirect infringement was not recognized, there was no need for limitations and exceptions. One very good example that came to mind would be the approach in New Zealand for dealing with hyperlinks. New Zealand did not fully recognize the possibility of infringing through a hyperlink to a resource. As a result, it did not have a safe harbor provision to deal with internet intermediaries that provided links to resources, because it saw no need. It did not fully recognize indirect liability. With regards to the question about whether the analysis used had seen the absolution of educational institutions for criminal liability, the answer would be yes. If they looked at the study, some of the provisions went as far as to exempt educational institutions from criminal liability. With regards to the third question about the Member States with provisions that dealt with flexibilities, limitations and exceptions for TPMs and RMI, he reiterated the analysis was done vis-a-vis provisions that provided flexibilities, limitations and exceptions towards dealing with educational activities. In other words it was a very narrow way to look at flexibilities, limitations and exceptions. That meant that there was certainly more provisions that dealt with flexibilities, limitations and exceptions generally, but he had chosen to focus only on those that had a broad, general indirect reference to education activities. If they looked at the categories of limitations, exceptions and flexibilities that that Member States had introduced, he had spoken a few minutes earlier of security research. Theoretically security research was not something that pertained to educational

instruction, but in institutions of higher learning, they did have courses or modules that taught about information security and computer security. As a result, that exception would enable the institutions to discharge that aspect of their educational work. Likewise, with interoperability, that would be another example of limitations, exceptions and flexibilities that at first sight did not seem to have reference to educational activity. However, educational activity was very, very wide. It did not only span instruction at the primary and secondary school levels but also at institutions of higher learning. They also had to talk about educational instruction by way of vocational instruction and professional instruction. All of those fell within educational activities. As a result, the net was cast wide for that particular analysis.

191. The Delegation of the Islamic Republic of Iran asked the Secretariat if it would be possible to have a copy of the presentation file to be able to share it with its capital based experts, so that they could benefit from the informative presentation. The Delegation had one question, which might be outside of the scope of the study, but directly related to the mandate of the Committee on the specific issues. Based on the conclusions and findings of the study could he express his views concerning the necessity to have an international legal instrument to harmonize national legislations concerning the needs of educational institutions, while recognizing the divergent views among Member States concerning those specific issues? Could he find any specific limitations and exceptions, which could provide common ground among Member States or constituents, and bring them together toward any particular norm setting activities in the future?

192. The Chair stated that some of the questions that the Delegation of the Islamic Republic of Iran had asked related to matters within the Committee's competence. He left it to Professor Seng to answer as best as he could, but it was something that he should bear in mind.

193. Professor Seng stated that he had been looking at a report of the discussion the previous day, regarding the possibility of harmonization for limitations and exceptions for libraries. For the purposes of his study, one of the most important harmonizing factors had been Article 10 of the Berne Convention. Article 10 of the Berne Convention represented the best attempts of the Delegates, at a particular point in time, to try to deal with the pressing need for limitations and exceptions for educational activities. If they recalled, Article 10 encompassed not just reproductions for illustration purposes and for educational purposes but also quotations. Article 10 was the harmonizing factor that ran through much of the analysis that he had seen in the provisions. Additionally, it had been interesting for his study on limitations and exceptions, from a pedagogical perspective, the way in which educational activities could not just be broadly described as use, which was the way Article 10.2 had described it. It also fragmented into so many other aspects, which sometimes, at first sight, did not seem like educational use. However, on closer reflection they had bearing on educational use. If they recalled during the previous presentation he had made, one of the first things he wanted to do, was to set the record straight that if they looked at private and or personal use, it fell within the ambit of educational activities. Education was not just about the imparting of knowledge in an educational institution but also self-actualization and self-edification. Consequently, the scope of education was very wide in its ambit. As to whether an international legal instrument could seek to harmonize the plethora of approaches and divergent methodologies and formulations that they had seen in Member States' legislation, he proposed that if that instrument could go beyond what Article 10.2 had done, and could achieve something more than what the Delegates had achieved by way of consensus in the extensive deliberations that had taken place in a Stockholm conference, then it was something that the Member States should consider. However, the starting point should be the baseline upon which the Member States had agreed upon, as far back as the Stockholm conference. That conference set the stage for a lot of the understanding on limitations and exceptions that they saw in the legislation of the Member States.

194. The Delegation of Singapore shared what Singapore had done in terms of limitations and exceptions in that area. They had a process that moved amendments through subsidiary legislation, instead of primary legislation, which could be a little bit faster. For example, the Delegation had the 2017 excluded works order, to provide for a massive open online process that facilitated online learning.

195. The Delegation of Ecuador stated that Ecuador was in the process of updating its legislation and it would be taking into account the content of the presentation. The country was going to try to have a new provision on limitations and exceptions to copyright law. The Delegation had also taken into account the regimes for limitations and exceptions, which had been adopted by the various WIPO Member States, as well as the existence of other compulsory licensing regimes. Were there cases in which the two regimes had been applied without distinguishing them? Furthermore, was there any legislation that had been reviewed by the study, which included a type of flexibility for free of charge licenses? Last but not least, were there compulsory licensing regimes that had been used in any way in the new copyright laws that had been adopted in some of the Member States, which had been the subject of analysis?

196. Professor Seng stated he was unsure about the two cases the Delegate had referred to. In relation to the licenses, if they went through the 1009 pages study, they would find that there was a row in it that addressed remuneration. With reference to the earlier study, to the extent that the licensing regime required some kind of equitable remuneration to be paid to the rights holders for the use of materials for educational purposes, it would be captured in that row of the study. They would see that it was applied across the board to the various categories of limitations and exceptions. It wasn't a mandate of the study for him to do a count of it, but the Delegate could look at the information that was there in the Annex. Where it had been found from the study that there was no need for the licensing fee to be paid, then it would say that in the Annex itself that the use of the limitations and exceptions was free. It had been marked "N/A or free." That had been reflected in the studies.

197. The Representative of PIJIP started with a comment that the study appeared to highlight the impact of globalizing mandatory protections through treaties, such as the WCT and the WPPT, without parallel guidance within those treaties as to limitations and exceptions. For instance, Professor Seng had mentioned that approximately 100 WCT and WPPT Members were guided by the treaties, and had enacted TPM protections, with no exceptions, either specific or general, allowing educational uses of TPM protected materials. That was contrary to the experience with the more general Berne Convention, in which there was in Article 10, the permissive educational exception. However, that permissive exception had led to a fairly widespread adoption of educational exceptions. The study seemed to point towards a possible path of work in the Committee, which would be to identify those areas where they had globalized new protections, without guidance for limitations for educational and other purposes and the potential impact of that. The study seemed to suggest that one of the impacts was that many countries had adopted the protections and then had not adopted the exceptions. Even though they were not prohibited from doing so, they were also not guided towards doing so. The Representative asked Professor Seng about another element of his work, which pointed to an aspect of limitations, which they had been calling openness. That was that exceptions were more useful, particularly in education, where they were open to the use of digital works or digital activities, specifically in the context of education. He had mentioned the different provisions in Australia and Lesotho. He had stated that in Australia there was a right of transformation but it was limited to literary, dramatic and musical works. That seemed to exclude other kinds of works, like audiovisual works for classroom use. Lesotho other hand, authorized the transformation of a protected work, or what they would call an open standard, applying it to many different kinds of works. He had also mentioned elements of openness in relation to

uses, and had stated that some laws broadly authorized the use of a work. That formulation reflected the openness of Article 10 of the Berne Convention, whereas other provisions more restrictively identified specific acts like adaptation without the broader formulation. Did Professor Seng have a comment on whether or not framings more open to uses and open to works were more useful in the countries that had them? Had he identified any kind of a trend over time of more open and more modern provisions? Was there a trend in more recent adaptations, going one way or the other, or between countries of different development levels, regions, common law or civil law traditions that had been recognized in that data?

198. Professor Seng stated that the study he had done was not a trend or a longitudinal study, which would allow them to pick up trends. That would require not only a study of the copyright legislation of all Member States, but also all the revisions made to all of the copyright legislation of all 191 Member States. It was currently, totally beyond his human abilities to do that study. A longitudinal study had been currently attempted by one other university. He believed that it had been Washington University, where a survey had been circulated to try to pick up the longitudinal trend. He could find that reference for the Representative later on. He believed that study had not been finalized. However, at least the draft form had been circulated, and if his memory served him correctly, it had confirmed that there was a trend towards the open framing of limitations and exceptions. That could be a good starting point for further analysis if that was interesting for the Representative. In terms of the discussions about transformation and the reason Australia did not apply transformation to some types of works, Professor Seng stated that the adaptation and transformation right was not fully recognized for all types of works in some jurisdictions. Australia was one such jurisdiction and Singapore was another other. There might be good policy reasons behind that, but it was beyond the scope of the study, because it did not pertain to educational activities. It was a restriction on the limitation of the right itself. He had seen no need to address that further.

199. The Representative of Communia stated that they had a few questions for Professor Seng regarding flexibilities, limitations and exceptions to TPMs. According to the study, about 60 per cent of WIPO Member States did not provide for such flexibilities. The findings were concerning because according to an impact assessment study conducted by the European Commission in 2016, technological restrictions were the most frequently encountered copyright related obstacle by users of digital works and education. There were about 31 per cent of educators and almost 37 per cent of learners that stated that they were not able to access downloads, use or modify digital work because of technological protections. When laws were drafted at the international level, they were expected to protect TPMs, in respect to the restrictive acts not authorized by right holders. Did Professor Seng think that the international legal framework permitted users to circumvent technological measures, when the aim was to exert their legal rights? Did he believe that it would be appropriate for national laws to allow users to make such interventions? The second question concerned Member States that did not allow circumvention. In the impact study, mechanisms available for teachers, students and other end users to enforce the rights to use TPM protected rights, without circumventing the TPMs, had been identified in only eight countries in the European Union. That meant that there were 20 countries in the European Union that were doing nothing to ensure that teachers and students could enjoy the rights and copyright exceptions for education. Furthermore, even when such mechanisms existed, they could be very burdensome. In Germany, Spain and Sweden it was necessary to go to court to get access to TPM protected works. In France, Italy, and the United Kingdom it was necessary to file a complaint with the relevant authorities. What were the mechanisms available to teachers and students to enforce their rights to use TPM protected works in the Member States that did not permit the circumventions of TPMs? Had he identified any such mechanisms? Finally, which countries had the most adequate provisions, to ensure that the beneficiaries of educational exceptions could legitimately access and use TPM-protected works?

200. Professor Seng stated that the observations from the Representative of PIJIP were quite

pertinent, in the sense that the WCT and the WPPT did provide guidance about possible limitations and exceptions for educational activities. That may explain many of the observations the Representative had made. What he had found, as indicated in the study, was that there were two possible formulations that had been adopted. The first was that beneficiaries could seek administrative help to circumvent, bypass, or get a solution from the right holders to enable them to proceed with the use of the work for educational activities. The other approach, identified by many of the other Member States, particularly non-European Member States, was to allow the educational institution to circumvent or bypass the TPM without exposure to both civil and criminal liability. The administrative processes that were put in place, as the Representative had noted, could be an impediment to the use of the work for educational purposes. At the same time, it was also worth highlighting some of the practical problems associated with just simply enabling educational institutions to circumvent. In many institutions, even a computer scientist would find that it was not easy or straightforward to circumvent a work to which TPMs had been applied. It could take years, months or weeks maybe to circumvent something. He saw the utility of the administrative processes put in place, as a means of enabling right holders to provide an easy channel for solutions to be given to the educational institutions to use the content for educational purposes. It may be that the administrative mechanism, or the policy behind that was that the right holder or author was the best place to provide the institution with the key to unlock the material, although that maybe burdensome from the perspective of the educational institutions. Perhaps it was a case of tweaking administrative procedures, or recalibrating and adjusting the threshold. He had also seen some Member States adopting the solution of enabling the educational institutions to approach the right holders directly for a solution to their need for circumventing the TPMs or RMI. There was also the fallback quasi-judicial, or judicial solution, in instances where the right holder refused to engage with the educational institution. A lot of educational institutions did not have any technical expertise to circumvent TPMs or RMIs. Right holders themselves had to be aware of the fact that educational institutions might need to circumvent that for educational purposes. A halfway point had to be found, to allow educational institutions and right holders to meet to address their needs.

201. The Representative of LCA stated that he had really appreciated the way in which Professor Seng's study had shown that one of the unintended consequences of the prohibition of the circumvention of technological protection measures, was that students did not completely understand how to engage in efforts to thwart hacking. Certainly the example that he had given in the educational context, as well as the importance of learning how to do security testing and the impact on cybersecurity had demonstrated that. In the United States of America, given how broad their prohibition on circumvention was, they had seen that section 1201 had had the effect of empowering the Copyright Office to regulate the entire industry or industry sectors. There was software that controlled more and more devices and that software was protected by technological measures. The circumvention of that was unlawful. As a result, they had a situation in which it was very difficult to do testing on things like automobiles and vehicles. The Representative really appreciated the fact that the professor had pointed out that issue. He also appreciated that the professor had pointed out the issue regarding contractual override. It had been very interesting to see the examples in the study, of countries that had allowed the overriding of contractual restrictions, for the purpose of preserving the educational exceptions. He had indicated that his focus had been just on those provisions in the educational context. Would it be a worthwhile project for the SCCR to study in greater depth, the contractual override in other contexts, and the importance of having contractual override to preserve exceptions that were adopted by countries?

202. Professor Seng stated that the contractual override provisions were worth looking at very carefully. What had been done in the Hargreaves report certainly was a step in the right direction. As he had indicated in his presentation, a more holistic study would have to encompass not just the provisions in copyright legislation, but also the general public policy

approach towards contractual rights. The solution adopted in the Hargreaves report had the advantage of surfacing the issue to the right holders. However, it had also given them an opportunity to frame their terms and conditions in a way that made it easier for educational institutions to use copyright protected works. That could be the distinction between the formulation adopted in the United Kingdom's Copyright, Designs and Patent Act (CDPA) and the other formulation, which he had just shown. For instance, in Singapore, if there was a licensing term or condition, which instead of limiting the use of the work to 5 per cent, it was 10 per cent, then he would say that that was something that went beyond the limitations and exceptions that were prescribed in the laws of Singapore and that should be encouraged. Hopefully, with the contractual override provisions that he had looked at, market forces should come into play to try to encourage or facilitate content providers to raise the bar to facilitate the use of content for educational purposes. That was somewhat implicit in the Hargreaves report as well, because they talked about greater transparency and accountability of those same terms. He was afraid he would have to take the cue from Member States and the Secretariat, regarding whether or not he thought it as a worthwhile project to be undertaken at an international level. That study might be hampered by the fact that unless the jurisprudence of the Member States was extremely robust, they might not find a lot of very clear examples and traditional guidance regarding the application of public policy principles regarding the problems they had talked about. For instance, in Singapore, he did not believe that they had any case law that dealt with the application of public policy rules to a contract overriding limitations and exceptions in the Copyright Act. If that was the case, then it was unlikely that they would get a lot of very clear, unambiguous judicial guidance on the matter. Consequently, that might be limitation not of the study itself, but of the circumstances and the nature of the question that was being posed. It was worth contextualizing the problem for what it was. It was worth exploring, but there were also additional limitations.

203. The Representative of KEI stated that after the professor had discussed the restricting or limiting of copyright liability for educational institutions, he had been prompted to look back at the African Group proposal in the consolidated education text of the Committee, which could be found in document, SCCR/26/4 PROV., from April 2013. The African Group proposed in an article on limitation remedies for infringement, the text that stated, "in addition to other copyright limitations and exceptions, such as those included in Articles 10, 10bis, the Appendix and other Articles in the Berne Convention, and consistent with Article 44.2 of the TRIPS Agreement, Members agree to establish appropriate limitations on the remedies for infringement of works in the following circumstances." They had noted, "to copy articles for purposes of use by students in performing classwork", "to make copies of books and other works used by students and teachers, when the prices charged for the works were unaffordable by the educational institution or by the students", "to make a translation of the work, for the purposes of education", and "to make copies of works no longer available from publishers, and/or for which the owner of the work cannot be found, if a good faith effort fails to identify the owner of the work." The African Group had said that that article in part C of the provision, would only be applied to members considered to be developing countries, in conformity with the General Assembly of the United Nations. Could Professor Seng reflect on that type of formulation?

204. The Chair stated that since the Representative was putting Professor Seng on the spot, it was up to him whether or not he wanted to comment on the statement. He left it up to the professor in the interest of a good exchange on the topic.

205. Professor Seng stated that he would love to look at the language of that again. First he would ask himself whether the provision in question captured and encompassed at least all the six enumerated categories of educational activities addressed in the previous study. If it was just copying for educational purposes, that may not be enough. They had talked about education performances, and educational broadcasting. The other thing to watch out for was that education was open textured. As he had explained, today, it was *de rigueur* for an

institution of higher learning to impart knowledge about cybersecurity and hacking to students. That was something that had not been envisaged five or ten years ago, and it could not easily fit in any of the categories relating to reproduction and communications. It was worth thinking about the flexible nature of education and whether anything that they had could do justice to the fact that education was so open textured and open ended, but yet so critical. It was the chance for them to advance mankind by imparting knowledge to their children. As a result, something that was worth considering, was that they attempt to encapsulate the open, flexible nature of educational instruction in unambiguous, international language. He hoped that had given the Representative food for thought, as that particular exercise had really given him food for thought regarding how to go about doing that Herculean exercise.

206. The Representative of EI asked if Professor Seng had found provisions in the legislations he had reviewed, which limited copyright liability, with specific reference to teachers and students? Had he seen recent trends in the integration of liability provisions in national copyright legislation?

207. Professor Seng stated that in terms of limiting copyright liability and exposure to teachers and students, he did not recall coming across anything specifically for that. The closest provision he could think of would be in relation to the provisions regarding statutory damages. In the study, he had referred to the statutory damages provisions for certain types of educational activities, which fell within the work of teachers or students. In terms of integration, in other words harmonization, he had not seen anything specifically on that front, although they had the example of the Bangui Agreement and the European Union copyright directives, which were examples of harmonization. There was harmonization there, if that was what the Representative was referring to. However, he was not aware of harmonization specifically for educational activities.

208. The Representative of the IPA stated that Professor Seng's clarifications and points around technological protection measures and contractual override had been very interesting from a right holder's perspective. In the publishing sector, the various mechanisms that had been developed around the world to conciliate the potential tension between exceptions and technological measures were a far preferable approach, than self-help circumvention, which often involved tools that were also developed for illegal purposes. It may be true that some of those procedures were more onerous in some countries than in others, often due to local legal traditions. However, in many of them, Member States had designed the so-called intervention mechanisms. That was something that was not harmonized, even at the European Union level, although there was a provision in Article 6.4 of the Directive. Many mechanisms involved outreach, and in their experience they were rarely used. Was that consistent with his findings? Wouldn't outreach as a first step be far more preferable? That was a first question. With respect to the issue of contractual override or the ban on contractual override, they viewed that as an unfortunate trend in limitations on contractual freedom, and did not really agree with the findings of Professor Hargreaves. They believed that those provisions undermined licensing solutions. He had mentioned laws in the United Kingdom, however those laws also had provisions that advocated for licensing agreements, in such cases where the exception would not apply. There could be a tension there. However, licensing solutions could often be tailored to specific instances, uses and problems. Did his findings show that those kinds of solutions should also be encouraged?

209. The Chair stated that the questions that had been asked were essentially policy questions, and Professor Seng was free to address them in any way he thought was appropriate.

210. Professor Seng stated that with regards to the observation that the self-help mechanism could not be a proficient approach, as the approach in which right holders provided educational



institutions with the appropriate solutions to bypass the technology protections, he fully understood the tension there. In the digital environment it was really easy for a work, which was not protected by copyright to be widely circulated and pirated, sometimes with disastrous consequences to the publishers and to the authors in question. The point that he had made about the approach was that publishers should really try to find mechanisms, or what he had called unlock key mechanisms, or backdoor mechanisms, to allow educational institutions to have access to those works for educational purposes. However, he also added that there was a twist to that particular approach. The backdoor mechanism was something that would be frowned upon by the computer science community. The moment a security mechanism was designed with a backdoor, it was actually as good as not having a security mechanism. The recent debate between Tim Cook and the FBI, regarding a possible backdoor to be implemented on the Apple iPhone mechanism, had ramifications for the discussions they were currently having. If they had a backdoor mechanism implemented for educational institutions to gain access to the work for educational purposes, where did it leave publishers in terms of securing their work? Having a policy in place was only half of the analysis. The other bigger half of the analysis resided in what exactly they were seeking to achieve, by putting security on the contents for which they were seeking to make available. That was a very, very difficult question for which there was no easy solution. With regards to the second point that the Representative had made about contractual rights, he noted that currently it was the exception. It had been adopted by a minority of WIPO Member States. Additionally, perhaps it had not come across as clearly as it should have in his response, but one of the intended objectives under the contractual right was to encourage content providers to actually offer contractual licenses that bettered the limitations and exceptions. In other words, they set the bar, or the baseline for the negotiations. The point that the contractual right might affect the negotiation flexibility was a good one. At the same time, if the contractual right did its work in a free market, it should have the objective of ensuring that there was greater access to the content, at more affordable prices. In terms of the policy thinking behind the Hargreaves Report he would not be too dismissive of the report. He was aware that it had tied the hands of the content providers. Nevertheless, it was an opportunity for content providers to raise to the occasion, so that a halfway point could be found between the baseline that was set by the limitations and exceptions and the needs of educational institutions.

211. The Representative of The Coalition for Intellectual Property Rights (CIPR) stated that he also spoke on behalf of the School of Information Studies in the Center for Information Policy Research at the University of Wisconsin, Milwaukee, one of the newest observers in the SCCR. He also spoke as a member of the broader community of library, archive, curator and information technology educators, who were a part of the iSchool movement. They existed in dozens of countries and 100 universities around the globe. The opportunities of current online digital education meant that knowledge was indeed a global good. The fact that he had students routinely taking his class from locations on all continents but Antarctica, attested to that reality. He asked Professor Seng whether from a national IP strategy viewpoint, he believed the current limitations and exceptions were adequate to support cross-border opportunities among the globe's educational institutions, educators and learners, including self-learners, as he had stated earlier.

212. Professor Seng stated that unfortunately he did not have any easy solutions. The cross-border exchange of content was a complicated issue. The baseline starting point for educational purposes, should be the nature of the work they were seeking to exchange. He drew some analogies from his studies on information technology law. One of the most successful cross-border exchange of content that had ever taken place was the open source movement. It had made it possible for contributors around the world to exchange code expression, ideas and information regarding the creation of an open-sourced platform for software. In current terms, that was to operate with very little worries about copyright limitations across the world. It had been possible because of the nature of the content that was

exchanged and the willingness of the contributors to work towards a common platform. He saw the role of the law there as only part of the solution to the problem. The other solution to the problem really ought to be the availability of the content that was in the public domain or free from any licensing structures. In the open source example, by developing an entire operating system, with code that was free from the structures of patent law and copyright law, the community in the movement for the development of operating systems was able to thrive. He did not think that having laws in place would be the end all be all. He knew that a lot of academic institutions were currently working on an open access platform, trying to make academic content available for free access to students and academics alike. Therein lied what they were looking for. They had to have content that was easily and freely available with few, if any, licensing restrictions. Additionally, they needed to have the laws to support them. Both had to go hand-in-hand for the entire scheme of things to work.

213. The Representative of the CC stated that she had two questions. First, according to the professor's study, very few provisions specifically enabled the adaptation of a work in the context of performances. Did that mean that the adaptation of literary and dramatic works for the purpose of performing a play in class, as a part of a theater, drama class or school event was not permitted by the majority of WIPO Member States? Had she understood Table 1 correctly? The second question was larger. He had made reference to the trend towards open educational resources, where universities, school districts and ministries of education put money into openly licensed materials, so there could be that flow across borders without the concern of different copyright laws limiting that. However, even there they had seen that educational materials had to refer to existing content in order to teach history and to teach critical studies. Were there particular limitations and exceptions in education particularly useful for harmonization, or to have minimum standards to enable the cross-border collaboration, even for things that were primarily open resources?

214. Professor Seng stated that the Representative's reading of the table was correct. There were very few provisions that allowed for adaptations of performances. In relation to the second question, they were looking at what he called a level two problem, as opposed to a level one problem. A level one problem was the one he had talked about earlier, in which content which was generally not licensing heavy could be easily shared across borders. However, within the content itself could be references to copyrighted content. To the extent that the loss of the jurisdiction would enable a fairly nuanced approach to quotations or adaptations, that would surpass level two problem. Once they got past the level two problem, the level one problem was resolved in the way he had discussed. Whether or not they needed to look for laws that actually allowed for the creation of that content, which was free from copyright restrictions, was really something that the entire discussion was all about. That was whether they thought their existing limitations and exceptions worldwide were flexible enough, malleable enough to allow educators like himself to create content, which they could then share with the rest of the community. As an educator he consciously tried to look for, and went through a fair bit of trouble, to source only images that were in the public domain or creative commons. It had to be an active, conscious decision on the part of educators themselves, to keep themselves aware of the possible limitations, which copyright could place on the accessibility of the content, and to work on that basis, to ensure that their content was freely available and accessible across borders. That was his level two solution to that problem that the Representative had mentioned.

215. The Representative of Innovarte shared his personal experience. Fifteen years ago, he was the General Counsel of a Minister in a developing country. Somebody came to his office and said that they had a great idea. They were going to make a web site portal, with educational materials made by the Ministries of Education of different countries. They would upload the materials and then internationally, they would exchange and download the work in other countries for that purpose. Once he started looking at the copyright laws of the countries,

he saw the difference between the provisions, with regards to the scope of the quotation rights. The quotations in each country had a different scope, for example some of them allowed them to use pictures, while some did not allow the use of a picture. It meant that they had no legal certainty that what they were going to do would be a legal exchange of works, even if their works in those other countries would be legal. As lawyers, they decided to close the project. Fifteen years later, what was Professor Seng's opinion? Would he say that it would be possible to do that with the current system, or did they need to do something to harmonize the exceptions and limitations for quotation with regard to education?

216. Professor Seng stated that the Representative's question reminded him of a computer game he played, in which with every question, the level of difficulty rose. The level of difficulty with that question was close to the maximum level. It raised very complex copyright law issues, as to the governing law behind the particular work, for which he was seeking to make available internationally. If the country of origin rule applied, and he could be confident that the country of origin rule in country of the work created by the educator encompassed quotations and compilations, he could be sure that from the country of origin, there would be no infringement of copyright. Subsequently, the impediments towards the circulation of the work worldwide would be tremendously lessened. If all of the jurisdictions applied the country of origin rule, in terms of the treatment of copyright infringement issues, that was one approach to adopt. The other approach to adopt was the one he had adopted, which was to go for alternative resources, for which there were no copyright restrictions or fewer copyright restrictions such as the public domain or the creative commons. He had been faced with that question very often by his colleagues in the law school, of all places. They had asked him the very same question the Representative had asked. How could they ensure that they could use copyright protected works for education resources? His solution to them was always very simple. He always told them that the first call should always be the creative commons and freely accessible licenses, or license-free resources. Educational resources were freely available nowadays. If they could find those resources they could address many of those concerns. He knew that it didn't sound like a solution of sorts, but for an academic, that was very practical indeed. It would vary from discipline to discipline. In some disciplines it was easier to gain access to the public domain or licensed resources, for example in the sciences. In other disciplines, such as the humanities, music and art, it might be more difficult and conceded that particular point.

217. The Representative of eiFL.net stated that her question pertained to contract terms, which had come up a couple of times in the interventions. In his study he had identified a number of countries, across really diverse regions, that had contract override provisions. How many of those provisions had been recently enacted? Had he seen a trend in that area? She observed that the previous day, during the presentation of the updated study on libraries and archives from Professor Crews, they found out that there were recently enacted provisions in many countries. Most recently, there had been the European Union directive proposal implementing the Marrakesh Treaty protecting from override. They thought that was an interesting, important topic for further exploration by the Committee. It sought to enable users to avail of the exceptions in copyright law. It was very relevant for access to digital resources, cross-cutting across all sectors of limitations and exceptions.

218. Professor Seng stated that as he had explained, he had not done a longitudinal study. However, from first impressions that seemed to be a relatively recent trend. He hoped that that addressed the question.

219. The Chair closed the question and answer session. He stated that those with outstanding questions were free to approach Professor Seng. He thanked Professor Seng for his presentation.

220. The Chair opened the discussions on limitations and exceptions for museums. During the previous session of the SCCR, the Committee had recommended that they continue the collection of data on that topic. Upon that request, the Secretariat had commissioned Mr. Benoit Muller to carry out that work. Mr. Muller would identify the most important international challenges for museums.

221. Mr. Muller stated that he was pleased to provide his progress report on limitations and exceptions for museums. As mentioned, it was a progress report and they were in the initial phase. He would present the approach and the methodology, as well as some very preliminary findings and ideas. However, the research was very much a work in progress. As part of that report, they were developing a table mapping limitations and exceptions applicable to museums' core missions and activities, as well as a compilation of relevant literature and case law. When he said "we", he explained that the work was being done in very close collaboration with a Geneva-based researcher, who was originally from Azerbaijan, and the WIPO Secretariat. The core object of the research was facts and information about museums practices, as well as the challenges with respect to limitations and exceptions. The scope of the research was focused on protected works. When they said protected works, they meant works protected by copyright and or related rights. Nevertheless, they were quite aware that there might be implications for broader culture, heritage regulations and legislations in the field of preservations of cultural heritage, or when an item held in a museum was the expression of a traditional cultural expression or traditional knowledge. In those instances, there might be specific rules applicable and there could be some other intellectual property rights implications. For example, a design museum would have objects that might be protected by designs. In an automobile museum, there may be trademarks on those items, and the museum itself may have a trademark. A science museum might showcase inventions that may or may not be protected by a patent. They were aware of that, but they were not looking into those areas. They had focused on copyright and related rights for protected works. At the same time, at least as a starting point, they were looking at all types of museums throughout the world, and at the full range of museums' activities, which they had organized into three big clusters. The first was preservation, the second access and the third exploitation. As a first step, they were conducting desk research, including looking back to the 2015 study on copyright limitations and exceptions for museums, document, SCCR/30/2, by Jean-Francois Canat and Lucie Guibault, as well as Professor Crews' study on copyright limitations and exceptions for libraries and archives. They were looking at literature, legislation, case law, and other sources of information, such as museum web sites. In parallel to that desk research, they were conducting interviews with museums and other key stakeholders. As there was a very wide range of different kinds of museums, they were trying to categorize museums. They were trying to do that looking at two different angles. The first was the way that museums were financed, and legally structured. There were museums that were fully public, others that were private, and many that were somewhere in the middle. However, they had found that museums shared a common core mission of preserving and exhibiting collections. Of course, some of those items were works protected by copyright. However, not all of them were. One aspect was looking at the different types of museums. The other was looking more at what they held in their collections, and the date when those items were created, since copyright had a term of protection. However, if they were looking at prehistoric art, clearly those items would not be protected by copyright, at least not economic rights. On the opposite side, if they looked at museums of contemporary art, then one could assume that most, if not all items in that collection would be protected by copyright. Again, it was not a black and white situation. Many museums would be somewhere in the middle, with some items that were protected by copyright and related rights, and others that were not. Another aspect was the kinds of works within the category of works that did hold items that were protected by copyright. If it was a painting, drawing, sculpture, photographs, video or installation, of course, it would not be the same in terms of the copyright implications. Looking at the two studies, the one on museums by Canat and Guibault, and the one by Professor Crews, they already had some very interesting facts. Canat and Guibault's study had

concluded that among the 188 countries surveyed, 45 countries had specific limitations and exceptions for museums. Professor Crews' studies noted among the 191 countries surveyed, 161 had exceptions for libraries and archives and among those, several had limitations and exceptions also applicable to museums. Looking at what those the limitations and exceptions were about, they noted that most were in the field of preservation, educational research, private therapy purposes, unavailable, unpublished, orphan works, exhibitions, catalogs or persons with disabilities. However, that was not a fully comprehensive summary. One should bear in mind that other or general limitations and exceptions, including for educational research and private purposes, might also be relevant. That already told them that national solutions varied considerably. They had already heard that from Professor Crews, with respect to libraries and archives, and Professor Seng with respect to educational and research institutions. That was very much the case for museums. They also noted that close to three-quarter of the Member States did not have specific exceptions for museums. Consequently, that begged the question: How was it working in those countries? To get a full picture of the situation, they were also looking into alternative solutions, including individual and collective licensing, which in some countries played a very important role with respect to museums activities. They did note that there was, indeed, some overlap between libraries and archives on one hand and museums, but there were also distinct issues. One very simple reason that the situation might be different for museums was that museums typically held originals in their collection. As a result, the copyright implications were not exactly the same as when dealing with reproductions of works. Also of significance was that museums often owned or managed rights themselves. Sometimes there was a combination in using exceptions to produce those works and then exploiting those works that museums owned for their own objectives. Sometimes there were also arrangements with third parties who exploited those works commercially. As a result, that led them to conduct interviews and to continue their research to really understand the practices, challenges and implications for museums. In the first cluster of the preservation of protected works, they were looking primarily at restoration, where there probably was not too much scope for limitations and exceptions. However, there were clear implications for copyright, and in particular moral rights. They were also looking at archiving. That was probably an area where countries that did have limitations and exceptions, typically had exceptions that applied to museums. They were also looking at documentation, and that included identifying the rights owners and building repositories, including metadata about those works. When looking at access to protected work, they were really trying to examine that from the perspective of users of the protected works held in museums' collections. Those users were, first of all, museums. However, unless the copyright had been transferred to the museums, under certain jurisdictions, museums might even need the authorization of the rights holders for the exception. In other jurisdictions there were limitations and exceptions to that effect. They were also looking at access by the public, typically attending exhibitions, and reproductions for private use. The most obvious situation was visitors attending an exhibition, taking pictures. They were also looking at museum libraries. Many museums had libraries. Additionally, they were looking at educational and research purposes. They were also looking at access to works for publications, which could be done by the museum or by third parties for other commercial purposes, such as advertising. They were looking at the trend, which they had seen clearly in many parts of the world, for museums to make reproductions of works held in their collections, available online. They were also looking the organization of retrospective exhibitions. That was a very particular case, and was not dealt with by copyright laws in many countries, but in some countries where authors had a right to access their own works. In the third cluster of exploitation of protected works, they were looking at entrance tickets. There were several facets to that. First of all, there was the fact that a museum could charge an entrance fee. The question was whether there were any implications for copyright and for limitations and exceptions. Additionally, many museums liked to reproduce a work on the ticket itself. There were some specific rules and practices in that respect. A very important activity for museums was to produce catalogs and other publications, traditionally in paper print form. Museum sometimes acted almost as a publisher. Another trend they had been witnessing, was for museums to sell high quality reproductions of

the items in their collections. Museums often claimed copyright themselves on the photograph or the image of the reproduction. However, there were also implications to clear the rights in the work that was reproduced. As a result, they were also looking at digital catalogs, which could be on site. Museums often had a didactic type of catalog to help visitors understand the works. Some museums were also making their catalogs available online on the Internet. Additionally, they were looking at derivative works, for example posters or sometimes even merchandising objects, which typically could be for sale in the museums shop. Another trend that they were witnessing, was that many museums organized all kind of events on their premises that had obvious copyright implications by themselves. For example, a work could be implicated if it was filmed in the background of something going on in the museum. The next steps would be to continue their interviews and to continue examining the relevant literature. They were particularly keen to compile and study case law, because he thought they could learn a lot by looking at the case law. However, as other researchers had noted that was never easy to get. He invited all of the Member States and the observers, provide those references, if they did have information about case law in their respective countries, which would be relevant to understanding museums practices and challenges with limitations and exceptions and copyright, in general. He would be extremely happy if they would give them those references, so that they could study those cases. They would then logically analyze the findings and provide a report during the following session of the SCCR.

222. The Chair thanked Mr. Muller for his interim report. He opened the floor for statements from national delegations. As there were no questions from the Delegates, in the interest of moving along the discussions on the agenda items, he stated that they would begin the discussions on the draft action plan. Following the meeting with the regional coordinators, they had agreed to have the discussions in informal session. The regional coordinators would bring along seven of their colleagues. Other members of the delegation were welcomed to sit in at the back.

223. The Secretariat stated that they would have the same arrangements with regards to the observation of the discussions in the room, including having the interpretation available, and having the transcript on the screen. They reiterated that as announced earlier in the week, that was subject to not sharing information about those discussions. That included not attributing particular positions to individuals or delegations, and not reporting any information about what occurred in the informal discussions. They asked everyone, to respect that request if they were going to stay in the room, and listen. It would be on that condition. They hoped that everyone would respect that, including not using any social media or other means to distribute information about the discussions.

224. The Chair welcomed the Delegations back to the plenary. He summarized what they had discussed during the informal session, for the benefit of colleagues who had not been. He would then open the floor for comments. First, he stated that during the previous session of the SCCR, the mandate had been given to the Secretariat to come up with a draft action plan for Agenda Items 6 and 7. To be fair, the Secretariat had not received very detailed guidance. The Secretariat had tried its best to come up with a draft plan, which had been reflected in document, SCCR/35/9. A couple of Member States had said that there was not enough time for them to consider the draft action plans fully. That comment had been well received by the Secretariat, as well as the Chair. At the same time, everyone had agreed that the draft action plans formed a good basis for discussions. On that note, they had talked about what they could do next. The agreement during the informal session was that the Chair would take a more active hand in drafting the draft action plans, with the understanding that in putting together that draft, Member States wanted it to be pragmatic, efficient and non-duplicative. It should not prejudice any normative outcomes, but it should fulfill the mandate that they had been given. They also discussed the number of plans. Most people were quite flexible on that. One Member State had made a very useful contribution regarding the substance of that. There

seemed to be flexibility towards just drafting two plans. However, in line with the mandate given to the Secretariat during the previous session of the SCCR, there were some elements that people had mentioned. A few of groups and delegations mentioned that the study on typology, regional seminar or setting up of a group of experts were useful. There were a number of Delegations that had also observed that the lack of an action plan at the current meeting did not mean that the work of the Secretariat did not continue. That said, to be fair to the Secretariat, unless the action plans were approved, they would not be able to proceed with the things that had been highlighted or suggested in the action plan. The Chair stated that he would try his best to give the draft action plans to Member States well in advance of the following session. Fortunately, that was in May of the following year. Someone in the room had mentioned four weeks in advance. He had quipped about Singapore's efficiency and said they could definitely provide it before four weeks in advance. He thanked the WIPO Deputy Director General and the Secretariat. They had tried their best to look at how to structure the discussions ahead, and structure the work in a very analytical manner. On behalf of all the Member States, he stated that they felt a strong debt of gratitude towards the Secretariat, for having given them a good base for discussions. He opened the floor to any comments from the regional coordinators.

225. The Delegation of Indonesia speaking on behalf of the Asia and Pacific Group, stated that it had already made it clear that the its group had received the draft action plans prepared by Secretariat for discussion. It had been agreed that they wanted to see an action plan that reflected progress towards their discussions and work on exceptions and limitations. They would like to see a draft decision that reflected the fact that most Member States were actually happy with and appreciative of the draft action plans prepared by the Secretariat. They had carried out discussions on the draft action plans. The result of those discussions had been that the Chair would work on the basis of the draft action plans, and the guidance that had been received in the informal session, to come up with further draft action plans.

226. The Delegation of Senegal thanked the Secretariat for all the work that had been done, particularly with respect to the informal discussions on the draft plan of actions. Those discussions had led to relevant suggestions and comments for the continuation of the Committee's work on limitations and exceptions. As the African Group had stated, it was in favor of work on the typologies and the setting up of a group of experts. However, they should not lose sight of their mandate. They welcomed the future work on that topic in whatever form.

227. The Delegation of China stated that it thanked the Chair and the Secretariat for the work on the draft action plan. It was very comprehensive and balanced. It agreed that the draft actions plans should be used as a basis for further discussions.

228. The Delegation of the European Union and its Member States thanked the Secretariat, as well as the Deputy Director General for the very hard work that had been put into the draft action plans. It also commended the Chair for the very skillful way in which he had conducted the informal negotiations earlier on. The Delegation had every confidence that the Chair's Summary would be drafted in a similar spirit.

229. The Chair noted that the following day they would move on to Agenda Item 8, Other Matters. They had several interesting topics to discuss. There was a proposal from GRULAC on the analysis of copyright related to the digital environment. There was also a proposal on resale rights from Congo and Senegal. Additionally, they had received a new proposal from the Russian Federation, with regards to the strengthening of theater director rights at the international level, which could be found in document SCCR/35/8. With regards to the artists' resale rights, Professor Grady from the Brandeis International Business School and Professor Farchy would be there to take them through those discussions. They would then go on to talk about copyright in the digital environment. Dr. Guilda Rostama would be there to present the study on that matter. After that there would be the proposal by the Russian Federation. There

would also be a videoconference, or a teleconference with Professor Jane Ginsburg, one of the giants of international copyright law, from Columbia Law School. That would be followed by the discussions of the Chair's summary.

230. The Delegation of Indonesia inquired whether it would be possible to submit written comments with regards to the presentation on museums.

231. The Chair stated that Member States were always welcomed to submit written comments on museums. He also asked the observers to do the same. In the interest of time, they had to move to discussion in the informal sessions. However, as always, everyone was welcomed to submit their written comments to the Secretariat, so that they had their views and on the different topics to be discussed.

## **AGENDA ITEM 8: OTHER MATTERS**

### *Resale Right*

232. The Chair opened Agenda Item 8, on other matters. He stated that that there were several topics to be discussed under that agenda item, including the proposal on the analysis of copyright related to the digital environment, which had been prepared by GRULAC. There was also the proposal on resale rights from Congo and Senegal, as well as a new proposal from the Russian Federation, with regards to the strengthening of rights for theater directors at the international level. Additionally, that afternoon, Jane Ginsburg from Colombia Law School would join them via video conference, to respond to any questions on the summary of the expert brainstorming exercise, which had been convened by WIPO in April.

233. The Delegation of Kazakhstan speaking on behalf of CACEEC expressed its support of the proposal from the Russian Federation, on strengthening theater directors' rights at the international level. The activities carried out by directors were very specific. Their work included various elements such as acting, staging, et cetera. Performances could be copied by technical means. Protecting the copyright and related rights of theater directors was essential, and an international treaty should be considered if that could be agreed upon.

234. The Delegation of Georgia speaking on behalf of CEBS reiterated that the proposal for analyses of copyright related to the digital environment was important, in terms of ensuring effective and adequate protection of copyright in the digital era. It took note of the preliminary report of the study on the impact of digital developments and the evolution of national legal frameworks, and looked forward to the presentation of the final study. The Delegation reiterated that considering the wide nature of the topic, which went beyond the scope of copyright protection, it would prefer to determine the concrete topics for the discussion, providing efficient use of time. It looked forward to the presentation.

235. The Delegation of the European Union and its Member States inquired if they were meant to give statements with regards to the three topics that had been mentioned for the discussion.

236. The Chair replied that that was preferable.

237. The Delegation of the European Union and its Member States stated that it continued to believe that the issue of copyright in the digital environment merited attention and discussion in the SCCR, in order to ensure that copyright could be more efficiently protected in the digital era. In that context, it took note of the preliminary scoping study, on the impact of digital developments on the evolution of legal frameworks in the last ten years, and the presentation at the previous session of the SCCR. It looked forward to the presentation of the finalized scoping study during the session. That being said, the European Union and its Member States stressed



once more that it was important to note that those were potentially very wide topics, not always clearly defined, and not only related to copyright. As a result, before they could take up the discussions, they should clearly determine the concrete subject of their conversation. With regard to the proposal from Senegal and Congo to include the resale right in the Committee's Agenda, as had been expressed in the recent meetings of the Committee, it was grateful to these delegations for the proposal, and the initiative to hold a conference on that topic. The European Union attached great importance to the resale right, which had formed a part of the European Union's legal framework for a decade. There was dedicated legislation applicable in all 28 Member States. It welcomed the progress report on the study on the economic implications of the resale right, presented by Professor Graddy, and looked forward to the presentation of the finalized study. As they had done in the previous meetings of the Committee and at the previous General Assembly, it gave its support for the discussion of the resale right at international level. The proposal from Senegal and Congo to include the topic in the Agenda of the SCCR went back to SCCR27 and was tabled during SCCT 31. For that reason priority should be given to that issue, should the SCCR Agenda be expanded to additional items in the future. With regards to the proposal by the Delegation of the Russian Federation, it had taken note of that proposal, concerning strengthening the protection of theater director rights at the international level. As the document was only received very recently, it would like further time to review the proposal and reserved the right to take a position on it.

238. The Delegation of Georgia speaking on behalf of CEBS restated the great importance it attached to the proposal put forward by the Delegations of Congo and Senegal on the resale right, for the future work of the Committee. CEBS thanked Professor Graddy for her extensive presentation and progress report of the study on the economic implications of the resale rights during the previous SCCR session. The Delegation welcomed the presentation of the completed study. CEBS was in favor of including the proposed item into the Agenda of the Committee, which would further efficient exchanges on that topic. At the same time, it thanked the Delegation of the Russian Federation for putting forward the proposals on strengthening the protection of theater director rights at the international level. It took note of the document and looked forward the discussions on that topic.

239. The Delegation of Senegal speaking on behalf of the African Group stated that it was grateful to the Delegation of the Russian Federation for its proposal concerning the strengthening of theater director rights at the international level. It had taken note of the contents of the proposal. However, like other Delegations that had already taken the floor, it had received the proposal somewhat late. As a result, it needed to defer the discussions of the proposal. . It noticed the scoping study on the digital environment and awaited the final study with interest. It also took note of the study on the economic impact of the resale right, and awaited the presentation on that topic with interest.

240. The Delegation of China thanked the Delegations of Congo and Senegal, as well as the Delegation of the Russian Federation for their proposals. It stated that the proposal by the Russian Federation was a very important issue. The proposal was being studied, which would facilitate the discussion of the issue.

241. The Delegation of Senegal spoke in its national capacity on the question of the resale right. It would make some proposals regarding the way in which it would like to see the discussions proceed at a later point. It expressed its gratitude for the interest that countries had shown on the subject. If the Agenda of the Committee was to be expanded, priority should be given to the resale right, for reasons that had already been outlined by other Delegations. With regards to the GRULAC proposal, it was a very reasonable, legitimate proposal and it raised very topical and important issues. The Delegation would provide its comments during the course of the discussions on that topic. It provided comments with regards to the proposal

submitted by the Russian Federation. Senegal's legislation recognized the right of theatrical directors. Obviously, theater directors had the same rights as anyone else whose rights were protected. Text, sound, lights, acting, voices and scenery was involved in creating and producing a theatrical production. That distinguished theater from the cinema. It was not a question of producing a work. Theater directors put in creative work and left their personalities stamped on their productions. That was an integral part of the work. Having said that, the exclusion of theater directors from copyright protection might cause difficulties and could give rise to problems. However, international texts did not necessarily exclude theater directors from the protection offered by copyright. Consequently, at the moment further information was needed on that subject. The Delegation would keep an eye on future developments in relation to that issue.

242. The Delegation of the Russian Federation thanked all the Delegations that had already spoken about its proposal and had offered some support. They all understood the extent to which the economic rules of copyright were important. That was a key issue, which was of interest to every Member State. However, none of them should forget about the role that copyright also played in the development of a country's culture. The social impact of copyright came from its support of authorship and creativity. Those two things went hand-in-hand and should guide any work that was done on that topic in the future. The Delegation very strongly supported the idea of including the study on the issue of copyright in the digital environment on the Agenda. That topic merited further study because it represented the future of copyright. It was one of the main issues that should be discussed in the Committee. The Internet and the digital environment was now present in every area of copyright and if they did not manage and find a mechanism to regulate it, they would have enormous losses to deal with. That included economic losses, social losses and losses from the point of view of the development of culture. As a result, it strongly supported work being done in the future on that area. It also supported the proposal from the Delegations of Congo and Senegal on the resale right. That was also an issue of great economic importance and it should be supported in the international copyright environment. Russian legislation had a legal provision that covered that issue. At the same, the issue of international regulation made it difficult to deal with remuneration in that area. It supported that proposal. The Delegation had a few comments with regards to the proposal that it had submitted during the last General Assembly, which it was putting forward once more in the SCCR. Obtaining legal status for theatrical directors by making changes to international treaties or agreements was one way of dealing with the issue. Another possibility was adopting a new international treaty. They could either have an individual, separate document dealing with that topic, or they could make the appropriate changes to international treaties, which already existed. They needed to further discuss that topic, but they did not necessarily require a very long time to sort it out. Directors in modern theaters did creative work, which involved all kinds of theatrical activity, including acting, decorations, sound and musical accompaniment. All those activities were similar to that of a film director. However, the rights of film directors and their creativity were covered by copyright. Unfortunately the rights of theatrical production directors were not. Theater productions were often used by third parties without the permission of the theater director and without remuneration being paid to them. That was the problem they wanted to try and tackle.

243. The Chair informed the Delegation that it would have an opportunity later on to explain its proposal. The Committee would look at the proposal after they had heard the professors' presentations. .

244. The Delegation of the Russian Federation stated that as the discussion seemed to be already underway, it wanted to go ahead and discuss the proposal in detail. However, if the Chair preferred, the Delegation would go along with his suggestion, and would present a more detailed explanation about the proposal at a later stage.

245. The Delegation of Japan delivered its statement with regards to the proposal on the resale right. First, it expressed its gratitude to the professors for their presentation during the SCCR. Japan was one of the countries that did not have the resale right in its national legislation. Information regarding that right or mechanism would be useful for them to objectively analyze the current situation. However, it expressed concern that introduction of new topics may reduce the time on the current items, including the broadcasting treaty. The Committee should focus on the current issues of the Agenda.

246. The Delegation of Brazil delivered its statement on the proposal on the resale right, and the proposal tabled by the Russian Federation. The Delegation would reserve its comments on the proposal on copyright in the digital environment for a later time, if that was acceptable. With regards to resale rights, it welcomed the discussions in the Committee. There were legal provisions in Brazil about that right. It would be glad to learn more about that topic and to contribute to the discussions. It had also heard with great interest, the discussions on the proposal on the rights of creators and other right holders of theatrical works. It was currently consulting with the relevant authorities in its capital about that issue. There was no specific legal provision about that, but the proposal contained very important elements for discussion.

247. The Delegation of South Africa supported the proposal by Senegal and Congo to include the resale right in the Agenda of the SCCR. It was an important topic that could assist many Member States, particularly those that were currently undertaking Copyright reforms, and wished to include that issue in their national laws. With regard to the proposal of the Russian Federation, the proposed study could add value to the discussions in the Committee and the development of national and international copyright law.

248. The Delegation of Botswana joined the other delegations in expressing its support of the proposal made by Senegal and Congo to include the topic of resale rights in the SCCR's Agenda. It was evident that a good number of WIPO Member States either had resale rights in their laws or were considering to include such rights in their legislation. As a result, the discussions in the Committee on resale rights would assist their legislators and should be prioritized in the Committee. The Delegation took note of the proposal made by the Russian Federation on strengthening the rights of theater directors at an international level. It would like more time to study the proposal and would engage constructively in the discussions thereafter.

249. The Delegation of the United States of America provided some observations on the two topics under discussion. First, with respect to the proposal for copyright in the digital age, the Delegation affirmed that the SCCR should be a forum to discuss timely and significant substantive copyright issues without the pressure that preparation for norm setting would bring. Certainly, the area of copyright in the digital age was a broad area and many, many topics to be considered presented a great opportunity to test that objective in practice. It looked forward to the discussions and the explanations by the professors, as the Committee began to narrow the topics, which would most likely lead to productive exchanges. That had been, and would continue to be its orientation in that area. With respect to the resale royalty right, it should come as no surprise to the Committee that the United States was not amongst the WIPO Member States that had implemented *droit de suite*. Nevertheless the topic was one of lively interest in the United States. Most recently, the Copyright Office had provided a revision of its study on the topic in 2013. Again, in that context, that was one topic that would provide a good topic for discussion, without leading to norm setting. In that regard, it agreed with the Delegation of Japan that the Agenda was quite busy at that time, and listing that topic under, "Other Matters", provided a place on the Agenda to have that substantive discussion. It looked forward to the presentations along those lines.

250. The Delegation of Cote d'Ivoire supported the inclusion of resale rights in the Agenda of the future work of the SCCR and stated it would implement the resale right as an important

economic right. The Delegation had observed that there were some skeptical Delegations. However, discussions on the resale right did not necessarily have to lead to the adoption of a treaty, but would serve to further study the topic. It was a very pertinent discussion and the Delegation reserved the right to discuss it further after the presentation.

251. The Delegation of the Islamic Republic of Iran highlighted the importance of the resale right. It looked forward to the presentation on the economic aspects of the resale right, and welcomed further discussions on that issue in the forthcoming session of the Committee. It expressed its appreciation of the proposal by the Russian Federation. The proposal had been under consideration by relevant authorities in the capital and the Delegation would provide clearer comments in the future.

252. The Delegation of Cameroon stated that it was with great interest that it had followed the proposal from Senegal and Congo, to include the resale right in the Agenda for future work. The resale right was an economic right that been provided for in Cameroon's legislation for copyright and related rights. The Delegation would follow the different debates with interest and would make its modest contributions as the discussion developed.

253. The Delegation of India stated that it recognized the emergence of new and important issues such as artist's resale rights, and copyright in the digital environment. Even though the resale right was recognized by the Berne Convention, it had not been applied in all Member States due to the optional obligation or non-mandatory nature. By recognizing those rights across the Member States, one could ensure the transfer of benefits to the rightful owners. The Delegation supported the proposal by the Russian Federation to initiate a study with regards to the rights of theater directors under the copyright laws of Member States. It would make comments on the proposal in time.

254. The Chair opened the floor to observers for comments. He asked them to keep their comments within two minutes. The Secretariat had put a timer in place to help with that.

255. The Representative of KEI stated that it definitely supported the proposal on resale rights. A Diplomatic Conference on a treaty dealing with physical works of art would be a beautiful thing for WIPO to do. With regards to the issue of the copyright in the digital age, it would be a good idea to ask the chief economist to appear before the Committee, to discuss the type of analysis that might help to deepen the understanding of the distributional issues raised in the original proposal. It was interesting to have experts dig down a bit as to how the 1971 Annex to the Berne Convention and the Tunis Model Law, done in the 1970s, would work in the digital age.

256. The Representative of the Instituto Autor stated that it was a non-profit research organization based in Spain, focused on the study and analysis of copyright from a legal and business approach. It also developed many training courses in the field. It was a pity that it was only in one day, that the Committee was considering the proposals relating to resale rights, put forward by Senegal and Congo, and the proposal on the right of theater directors, tabled by the Russian Federation. He supported both proposals. With regards to the proposal on copyright in the digital environment, he inquired whether the conclusions prepared from the brainstorming exercise organized by WIPO in April could be uploaded on the web site. Among those conclusions he emphasized the necessity of clarifying the notion of communication to the public established in the WIPO treaties. The European Union Court of Justice and some other national tribunals had interpreted the right in a way that was contrary to the spirit of the regional agreement reached by the Contracting Parties of the Treaties. For example, in the various cases, it seemed that the communication to the public right had been subjected to a kind of exhaustion principle. The distribution right was subject to the provision established in Article 6.2 of the WIPO Copyright Treaty. The European Union Court of Justice had looked at the ruling

according to the WIPO guidelines. As a result, new WIPO guidelines should be carried out in order to clarify the notion of communication to the public, and to ensure that right holders authorized communication of the public uses, carried out by organizations other than those that were regional, in the sense of Article 11bis of the Berne Convention, on the neutrality of the law in the digital environment.

257. The Representative of CIS reiterated the importance of the GRULAC analysis on copyright in the digital environment. CIS was a non-profit organization that undertook research on the Internet and digital technologies from an academic, policy perspective. In an environment of monopolies controlling the distribution of goods and services, which connected users and creators, such a study was of significant importance. That was especially the case for creators in the global south. CIS was especially concerned with regards to matters in which platform intermediaries were enforcing their own private IP laws on creators worldwide. They had mechanisms in place to address the take downs and subsequent restoration of works unfairly taken down from platforms. It showed a serious lack of transparency, and often actions were taken without appropriate justification or explanation. It was equally important that they continued to build on limitations and exceptions for libraries, museum, archives, educational institutions, researchers and users in the digital environment.

258. The Representative of FUIS stated that its organization represented over 25,000 authors, visual artists, screen writers, playwrights and musicians and worked to protect their rights. FUIS members supported the proposal by Senegal and Congo to include artists' resale right in the future work of the SCCR. The members of FUIS included many less known artists, as well as contemporary artists that were famous and whose work was seen all over the world. There was no evidence that the right had had a negative impact on the art market. Latest studies had shown that the purpose of harmonization of the right in Europe was to address the distortion of the market created by the existence of the right in some European Union Member States, and not in others. The resale right had been adopted in many countries in the world and the next step was for it to be implemented in all countries, so that all artists could benefit from it wherever their works were sold. In particular, the time had come for artists' resale right to be adopted in the United States of America, where many art sales were concluded, and constituted a hugely valuable part of the global art market. It was economically damaging to creators of any nationality and to the art market when artists did not receive a royalty payment when their works were resold. It made the production of artworks unsustainable if there was no continued investment in the source of the works.

259. The Representative of IAF expressed its gratitude to all the Member States that had supported the artist resale right, and in particular Congo and Senegal. The resale right helped to create an ecosystem where arts flourished by continuing payment to creators, funding the seed of their next creation. They needed to have a consistent approach to artist rights internationally, to ensure that in every country, artists' creations were respected and encouraged. As the previous speaker had done, the Representative emphasized that the studies on the artist resale right had shown that that right did not have a negative effect on the arts market. The IAF welcomed the introduction of the resale right in the SCCR's Agenda, which would result in leveling the playing field across the globalized art market, and would benefit all artists, no matter where their work was sold.

260. The Representative of FILAIE endorsed the proposal, which had been made by GRULAC, particularly in view of the inability of existing treaties to adopt to new models of business, where performers and artists were seeing their participation not adequately remunerated. Studies had been written, and a report had been delivered, which they would hear about later. However, in spite of that, only a few Member States had adopted or enacted legislation, which was appropriate for the digital environment. Therefore, they should continue to study the impact on

the value chain of new business models, particularly performances, as they were not properly represented and were not getting the remuneration that they should be getting, through international treaties. The GRULAC proposal was helpful and it should be discussed. If Delegates believed it was the issue should be put as a standing item on the Agenda of the Committee, so that it could be given the time and respect that such an important issue deserved.

261. The Representative of CISAC stated that he recognized the universality of the resale right. CISAC was a non-profit organization that managed the rights of millions of authors across the world, particularly of those who worked in the audiovisual sector. The resale right had been implemented for some time and for some artists and performers. Only some received the remuneration that they should. It was not possible to say that there had never been any hostility towards the resale right in some countries. It was never easy to get a right established. It was a right that had been fully included in the practices of the worldwide art market, which recognized it. No one would challenge the fact that it was both legitimate and well-founded that when a book was sold or when a song was broadcast, the author and composer had an interest in the success of the work. However, in the visual arts world, there was an art market in which the original material was most important. Once the artist had sold that work, the only way for them to be associated with its success was to ensure benefits through the resale right. Naturally, the resale right did not provide a large amount of remuneration to all those covered by it, but it was important in the art market.

#### *Digital Environment*

262. The Delegation of Brazil thanked all the Delegations that had expressed support for GRULAC's proposal for a discussion on copyright in the digital environment. It thanked the Deputy Director General and the Secretariat for having commissioned the scoping study by Dr. Rostama and having organized the brainstorming exercise. It was a first step in the wider process of addressing the issues involved with copyright in the digital environment. The Delegation had also enjoyed the summary document of the brainstorming exercise. Provided that they were transparent and inclusive, brainstorming exercises that brought together experts, were a good way to look at the discussions and decisions by the Member States. Copyright had undergone substantial changes caused by the rapid pace of the development of technology in the digital environment. The summary of the brainstorming exercise had put it succinctly, "legal standards necessarily appeared to be incomplete." The Delegation stressed two important points raised during the brainstorming session. It had been stated, "we should ensure that the authors who are lost within the vast chain of exploitation are not marginalized to the point where they are denied even the fair compensation they deserve." That concern had been expressed clearly in the document prepared by GRULAC. It had also been stated, "it should be recalled that at this juncture copyright law exists because there is a creator who is a natural person and that creator is at the origin of the works offered to the public. To forget that fundamental element was to forget the very foundation of the discipline." Those legal standpoints had been partly summarized in Dr. Rostama's scoping study describing the different legal systems, and the way in which countries had attempted to address the questions. It had made explicit the lack of national provisions on transparency and remuneration in the digital environment, reinforcing the need for the Committee to work on the elements highlighted in GRULAC's proposal. The questions and concerns of numerous authors, performers and creators had been voiced not only in the SCCR, but also in general media. As had been mentioned in the scoping study, "only few Member States have gone beyond the provisions of WIPO administered treaties by ensuring that right holders are remunerated appropriately in the digital environment." Yet again, that underlined the fact that national legislations were often shaped by multilateral rules, thereby reinforcing the need for a comprehensive international solution to properly address the matter. One of the options examined by Dr. Rostama was the use of equitable remuneration, with reference to digital works. That was an area that Brazil was

willing to explore, as there was already language in WIPO treaties and examples of national practices. The summary of the brainstorming exercise recognized the importance of the issue of fair remuneration and affirmed, “the need to think about more equitable sharing of value.” Brazil fully agreed with that perspective, and particularly supported the notion that, “the creator is at the origin of the works offered to the public, as the very foundation of copyright.” That foundation, however, was endangered by the so-called value gap in the amount due for the rights. Increased transparency would do much to help interested parties overcome the value gap. To ensure mutually advantageous arrangements it seems necessary to provide the tools for the asymmetry of access to information in the digital environment. Transparency would allow creators and artists to properly understand the payments and amounts they received, enhancing the management and exercise of their legitimate rights, while ensuring the proper accountability of the use of their works. The sustainable growth of the digital market required that the value of music be safeguarded and that creativity be adequately rewarded. The contribution of new digital platforms was undeniable as facilitators of access to music. The summary of the brainstorming session showed that many questions had been raised, most of them of the highest relevance, while few answers had been suggested. Those developments, while recent, were very dramatic and greatly affected the functioning of the market. WIPO and Member States were set to have a substantive contribution to it. For that reason Brazil suggested that copyright in the digital environment become a specific item in the Agenda of the SCCR. GRULAC's proposal invited Member States to discuss that issue, without in any way prejudging the results of the discussions. Everyone was welcome to make contributions to the debate. The Delegation did not forget for a moment that WIPO was a member-driven organization and a United Nations agency. Finally, it was of the belief that it was possible to address the topic with the attention and urgency it deserved, without affecting the time allocated to other relevant topics on the Agenda, which also required in depth reflections and discussions.

263. The Delegation of Costa Rica speaking on behalf of GRULAC delivered its statement with regards to the proposal for analyzing copyright in the digital environment. It hoped to continue the discussions on the basis of the document provided on the issue. It was essential to look at questions related to the digital environment, which had been raised by creators, performers, artists and representatives of governments from various sectors. Taking into account those concerns, the GRULAC proposal had contributed to the search for shared solutions, which would benefit both society and right holders, in lights of the challenges they faced with regards to the rights of artists in the digital environment. For that reason the Delegation had proposed a discussion on the new challenges related to that issue within the SCCR. It was aware that the issue was complex. There was an urgent need to discuss it with the attention it deserved, without prejudice in dealing with other items on the Agenda of the Committee. As it had been said in previous sessions, the Delegation welcomed the exchange of opinions between Member States on its proposal. It was grateful for the support that had been given to the proposal by Member States and observers and it hoped the Committee would analyze the issue in a more focused and detailed way. It was particularly grateful for the preparation of the scoping study by Dr. Rostama on copyright in the digital environment. It was a very useful instrument for discussing the causes of and solutions to those issues.

264. The Chair asked that the observers wishing to take the floor submit their written statements to the Secretariat, which would be reflected in the records of the meeting. He welcomed Dr. Guilda Rostama to the SCCR, who would present the scoping study analyzing the impact of the digital environment on copyright legislation adopted in the past ten years.

265. Dr. Rostama presented her report on “Scoping Study on the Impact of the Digital Environment on Copyright Legislation Adopted between 2006 and 2016.” The video of that presentation can be found at (Friday, November 17, 2017 Morning Session): <http://www.wipo.int/webcasting/en/?event=SCCR/35#demand>

266. The Chair thanked Dr. Rostama for her presentation and opened the Q&A session.

267. The Delegation of Brazil stated that the scoping study had addressed many contemporary subjects in the management of digital rights. It inquired about equitable remuneration, which had been a part of the GRULAC document. It noted that in the study that issue had been identified as a particularity. Nevertheless the Delegation inquired if there were any similarities between the different countries who were implementing such rights. Had any convergence been found among them? Or did they have very different ways of implementing those rights? The Delegation also inquired if there had been any recent proposals on the topic, which had not been addressed or any current parliamentary discussions on the topic.

268. Dr. Rostama stated that equitable remuneration had not been identified in the trends but as one of the particularities, because few Member States had implemented that provision. As a result, it was difficult to identify a trend. In fact, amongst all the Member States that were presented in the study, there had not been enough similarities, so they had been all listed there. There was not any provision that was repeated in the way it was stated. The identified particularities included a listing of all the Member States having such provisions. There were differences in the way they addressed the issue. With regards to the other questions, for the moment she was not aware of any other texts on that matter.

269. The Delegation of Estonia observed that the main objective of the scoping study was to describe the general trends and strategies adopted regarding the digital environment. However, when they read the methodology they were surprised to find out that it focused on provisions that explicitly and directly referred to the digital environment and that everything that referred to, for example, "in any manner or in any form", had been excluded. For many European Union Member States, including Estonia, it was considered good legislative practice to avoid all references to digital or to use formulations such as, "in any manner or in any form." The reason for that was to make sure that the legislation was technologically neutral, responded to the rapidly evolving technology, and would stand the test of time. Why had that been excluded from the study?

270. Dr. Rostama responded that that discussion had taken place with the WIPO Secretariat. They thought that it would be more feasible as a first step to look at how Member States had chosen to explicitly refer to the digital environment, which demonstrated that there was a specific solution on that particular topic. After discussions with the Secretariat they had chosen to look only at the specific reflection that had been carried out by Member States on the digital environment and the impact of the digital environment on copyright.

271. The Secretariat intervened and stated that the object of the study that had been entrusted to it was to specifically analyze elements, which were added, amended or modified in national legislations, to take into account the digital environment. It was not to just study all the laws from their inception. It had interpreted the request along those lines.

272. The Delegation of Brazil stated that it had a question with regards to the transparency of the payment of remuneration. That topic had not been addressed in the study. It was a part of the ongoing discussions that had taken place not only in WIPO but also in the WTO and at the regional level. For instance, the European Union, in the course of its digital market reform, contained a proposal in that sense. Had other such obligations been found? Or were there such best practices that were being implemented by Member States or regional organizations in that manner?

273. Dr. Rostama stated that she had only looked at national legislations and had not found said provisions. Because there were such few Member States that had those provisions, everything that had been found on that issue had been presented in the study.



274. The Delegation of Malawi observed that a map had been presented, which showed the areas where the study had been conducted. In terms of digital compliance, what had been found, in comparative terms at regional level, and what was it like, especially Africa?

275. Dr. Rostama replied that she had only looked at national legislations of the identified Member States listed in the study.

276. The Representative of the Centre for Internet and Society (CIS) inquired about provisions allowing the reverse engineering of computer programs. It had been mentioned that 81 per cent of Member States had exceptions for decompilation and the interoperability of computer programs. Could she comment qualitatively on how open she had found the limitations and exceptions to be in the study, and was there a Member State that stood out in its treatment of limitations and exceptions for computer programmers, and users of such digital objects?

277. Dr. Rostama replied that she would prefer not to make any qualitative comments on the provisions of Member States.

278. The Representative of the Canadian Library Association (CLA) stated that her organization represented libraries from Canada including public, academic, specialized, schools and other libraries located in heritage or memory institutions. In the report, it had been stated that the majority of Member States had adopted provisions to address the challenges of the digital environment. However, only 18 of those applied them to libraries and archives. The Representative addressed two points. First, libraries provided non-formal education, particularly to support acquiring skills necessary to learn and create in the digital environment. Libraries provided access to computers with internet connection and taught digital literacy. Many offered experiential learning through maker spaces with 3D printers, digital labs and recording studios, where users modified and remixed content and created new works. The study did not identify countries that had exceptions and limitations supporting those necessary roles for learning digital skills through non-formal education in libraries, apart from the relevance of the one user generated content exception. Second, the Representative addressed e-lending. In the exceptions and limitations for education institutions, the study had identified some Member States that allowed for copies of content to be made available to authorized users, through secure computer networks, recognizing that it was possible to limit access, without using dedicated terminals or the walls of the building. Yet in libraries and archives, the trend was to refer to dedicated terminals, limiting access to within the institutions' walls. Those digital activities referred to as e-lending were more restrictive than the print environment, where it was possible to remove a book and read it at a place of the user's choosing. Was it her opinion that the exceptions and limitations for libraries and archives in the digital environment had improved the ability of the institutions to serve their public interest missions and to take advantage of the potential of the digital environment? Had she seen any variations that the Representative had missed?

279. Dr. Rostama replied that everything she had identified was in the study. Additionally, as she had said before, she would prefer not to make any comments on whether or not the provision identified efficiently addressed the needs of libraries and archives. She would prefer to leave that to Member States to decide.

280. The Representative of International Federation of Library Associations and Institutions (IFLA) stated that very often they did not have the infrastructure to provide access to information. Sometimes they had free public space to be able to provide access to information. They were citizens and not just clients of the digital environment. Member States were strengthening rights for right holders in the digital environment and unfortunately the same thing was not happening with the flexibilities and exceptions to copyright. The study had made

reference to content generated by users, which occurred physically as well as in the digital environment and in libraries. However, in the past couple of years, the rights that they had with regards to exceptions and limitations in the physical environment, weren't being included in the digital world. They would like them be strengthened and consolidated for readers and the users of libraries. What risks did they run that there would be defects in maintaining digital rights of citizens, particularly taking into account the fact that libraries sought to consolidate citizen rights?

281. Dr. Rostama replied that that was an interesting question. She suggested that perhaps it was a topic that they could discuss at a later date because they were restricted on the time. It was a very global question but she would be happy to answer it after the meeting.

282. The Chair noted that Dr. Rostama would be leaving for Paris that night. That meant that those that had remaining questions to be answered were encouraged to approach her after the session to engage with her in more substantive discussions.

283. The Delegation of Brazil stated that the executive summary of the scoping study by Dr. Rostama had underlined the words preliminary, making it very clear that they were preliminary conclusions and that the work would be continued, in consultation with the group of experts chosen by the Secretariat and the SCCR. How did Dr. Rostama envision the continuation of the study? Brazil, as well as other countries had the intention to suggest experts to be included in the roster of experts.

284. The Chair stated that perhaps that was a question to put to the Secretariat, rather than to Dr. Rostama, because she had been asked to provide the study, rather than to have views on the modalities of how the study would be continued.

285. The Secretariat stated that indeed, the term preliminary might make one think that additional work would follow the study. However, the use of the term preliminary addressed the necessarily non-exhaustive nature of the study along the lines that Dr. Rostama had said herself. She was aware that perhaps certain interpretations or certain presentations did not totally reflect the reality of the legislations and that there may be amendments to be introduced. In any case, it was ongoing work, which was not exhausted that day. It was simply a contribution made for clarity and information purposes in the SCCR. With regards to the follow-up work for the study, it was up to the Member States to indicate what they desired. The Secretariat had answered the request, which was to study the evolution of the legislation in the past ten years, irrespective of anything that existed previously, that could cover the digital environment. The work that had been submitted reflected what had been requested. It was concluded and finalized. It was up to the Member States to provide requests and ask whether the study as it had been submitted was sufficient for them.

286. The Delegation of Brazil stated that it had understood that an ongoing process was already in place, based on the word preliminary in the executive summary of the study, and what had been stated in paragraph 248 of the Official Report, document, SCCR/34/7, which stated that the Secretariat had responded to the request that had been expressed in the previous SCCR to initiate the scoping study on the impact of the digital environment. In that case, it looked forward to constructive discussions with the Secretariat and Member States about how to move forward. It was of the opinion, that it should be pursued in depth. Based on the quality that they had seen thus far, they were encouraged to move on.

287. The Chair replied that that was something they could discuss that afternoon. There were a couple of studies that they needed to be addressed, to see how they could take them forward based on the appetite of the Member States. He thanked Dr. Rostama for her presentation.

*Resale Right (Cont.)*

288. The Chair stated that Professor Farchy would present the study on the economic implications of the resale royalty.

289. Professor Farchy presented her and Professor Graddy's report on "The Economic Implications of The Artist's Resale Right." The video of that presentation can be found at (Friday, November 17, 2017 Morning Session):  
<http://www.wipo.int/webcasting/en/?event=SCCR/35#demand>

290. The Chair opened the Q&A session for the report.

291. The Delegation of the European Union and its Member States observed that the European Union and its Member States had introduced the resale right. It had been very curious to learn about the impacts on the art market, because the professor had undertaken an assessment of the situation through a practical, empirical approach. It had taken note of the fact that she had found out that in the two cases in the United Kingdom, there was no detrimental effects on the art market, whereas the introduction of the resale rights seemed to have notably improved the situation of artists. Those results were consistent with what the European Commission had proposed in the European Union assessment. That had been underlined in the original proposal for the resale right directive, which motivated the European Union legislature at the time to adopt the directive. For those reasons, in line with the results, the request and the position that the Delegation had expressed in its opening statement on that agenda item, it reiterated that the topic was worth discussing in the Committee as a standing agenda item.

292. The Representative of IFJ stated that as regular attenders would recall, he believed it was time that the Committee devoted the time to that part of its mission, which was to promote creativity. Therefore, he fully supported the proposal that the resale right become a standing agenda item in the Committee, to advance the discussions, until all countries were ready to accept the findings of the report.

293. The Delegation of Canada inquired if the professor had come across any research that looked at the specific impact on an aggregate of artists, in a specific country, or focused on the impact not for the art market but artists particularly?

294. Professor Farchy stated that she had understood that the question was on individual artists. No, that was a completely different methodology from the methodology followed in the macro economic studies that had been presented. They looked at what happened on the entire art market. If they were looking at the impact of individual artists, that was something completely different. It would mean that they would have to monitor an artist or several artists over several years and compare the income of those who had benefited from the resale right to the income of those that hadn't. That required a completely different methodology. They had not explored it and she was not actually even sure that such a methodology existed. It would require an enormous amount of data, and she was not really certain that there was a centralized database anywhere, which would help them to get ahold of that data. Interviews would have to be conducted. The data would have to be sorted. That would be interesting to do in theory, but in practice it would be dreadfully difficult.

295. The Delegation of Brazil stated that it had that right in its legislation. However, according to their experience it was also necessary that artists were well organized, so that they could take advantage of that legitimate right. The Delegation had listened to the request of the Delegation of the European Union and its Member States. It was of the opinion that the resale right, as well as copyright in the digital environment had maturity, and included very large,

complex technical issues that deserved a specific agenda item. However, the Delegation was not proposing a standing agenda item, so that the situation could evolve in time. Nevertheless, there had been lengthy discussions, as well as studies. It would be good to have a focused discussion on each of the items, without affecting the other very important issues that they had been discussing in the Committee, such as broadcasting.

296. The Delegation of Côte d'Ivoire stated that it would be even more interesting if they could have more details on the study on the resale right, by including it in the Committee's Agenda. In that manner, they would be able to build at least a minimum amount of consensus around the issue.

297. The Representative of FIAPF stated that as representatives of authors, they were happy to have an economic study that finally provided details to back up the recent information that they had on the resale right. The case of the United Kingdom, which was very detailed was only a few years ago. It was very good because it gave them something that they could use to respond to people's fixed ideas on the issue, which were not well grounded. With regards to the economic aspect, in 2011 the European Union had also published a study on the economic impact of the resale right, which was available on the European Union's web site. It covered the 28 Member States and demonstrated the absence of delocalization, as a result of harmonizing the resale right in Europe. France, in that particular document, initiated a parliamentary study to be done by its national assembly in 2006 on the art market. That study had also come to the conclusion that the French art market was not suffering from the existence of the resale right. On the contrary, the existence of the resale right was of benefit to artists, and that itself was to the benefit of the art market. There was another argument that had been put forward in the study, which was published by Professor Farchy last year, which had taken an interesting focus on the impact, or lack thereof, on the public domain in literature and in music. As it was known, when a work came into the public domain there was an affect because that work was once again reused frequently, because people could use it without having to pay for copyright. As a consequence, there was a significant effect on a work coming into the public domain. It was inevitably republished and reused more than a copyrighted item. Again, on the resale right, there was information in a study, which indicated again that the sale of protected works and the sale of works in the public domain was not affected by the resale right. There was no negative effect there either and no positive effect, when the work went into the public domain. The Representative stated that they would like to see the work of the Committee on that issue get down to the basics, in trying to achieve universal recognition of the resale right.

298. The Delegation of Gabon stated that it was very interested in the study prepared by Professor Farchy. It was a very useful addition to the conference on the resale royalty right held in April. It gave them a very broad view of the various economic implications of the implementation of the resale right in the art market. One of the advantages of the resale right, , was its contribution to transparency and the traceability of works sold. In a market which was very discrete, and even secretive sometimes, traceability was extremely important. It was also crucial in the fight against the counterfeiting of works of art. The various data on the amounts under the resale right in France, were quite revealing of the fairness that the right brought to a very speculative market. The highly international nature of the market was an excellent reason for having international regulation of it. For all those reasons it supported including it as a standing item in the Agenda of the SCCR.

299. The Delegation of Senegal stated that it fully supported the proposal of Brazil.

300. The Secretariat thanked Professor Farchy who had taken the time responded to questions. . It also thanked Professor Graddy who they had the pleasure of hearing from during the previous SCCR session who was was not able to travel to meet with them on that occasion

301. Professor Farchy responded that all artists needed to be organized in order to benefit from the resale right. It was very true that artists on their own may not be able to do that. With regards to the question posed by the Delegation of Côte d'Ivoire about deepening the studies, there were studies on an economic basis, which had been done on a European Union model, because there were so many statistics available. It was important to have statistics available, but no doubt there were studies on a certain number of countries, which were not among the four dominant markets. That included the African countries in particular, which did not dominate economically. However, there was a lot of creativity, a lot of art and, therefore, sales of art. As a result, there was clearly a partial approach in the studies that had been done and there was a lot that could be done with regard to studying the market in Africa. A lot of African representatives had taken the floor and, therefore, it would be of interest to do such a study.

302. The Chair thanked Professor Farchy for her presentation.

### **Other Matters (Cont.)**

303. The Chair opened the discussions on the proposal submitted by the Russian Federation, on strengthening the protection of theater directors' rights' at the international level, document, SCCR/35/8. He invited the Delegation of the Russian Federation to briefly explain the proposal and delegates to present any initial views.

304. The Delegation of the Russian Federation stated that it was a very important topic and a necessary one for them to study. The issue had been discussed for a long time in its country and theater associations had supported the initiative. There had been some changes with regards to the civil code on intellectual property rights in the Russian Federation. They were proposing, as a resolution to the issue, protecting the way that productions were produced, to ensure that it was done through technological means or as live spectacles. The person who was involved in any kind of theatrical production was the director. However, it was the performer who had the protection rights. Currently the performers were only protected with regards to live performances and not with regards to the repetition of the performance or something in a live form, which was recognized by the audience as reproduced, and distributed by technical means. In the future, they could actually have the same live spectacle through a recording, or the live performance again without limitations on the use. In its legislation there were rights given to the invariability of the spectacle, against any kind of change in its meaning, or in a public performance or recorded format. That was reason the problem had come up. Why did they need that kind of protection? Because unfortunately the performances of the most respected and well-known directors in theater might be illegally copied. It was important to note that the performance may then be put on in another place, in a less qualitative way, and that might have a bad effect on the director's reputation. Unfortunately, theater directors had not been included in the Rome Convention and the WPPT in the area of performances. As a result, they had seen that all categories of performers were covered in the Rome Convention and in the WPPT except for theater directors. That meant that in 1996 when they had adopted the WPPT, they had included the rights of directors of audiovisual productions. Unfortunately, theater directors had been left out and had been offended at being left out. They first needed to study the national legislations of the Member States of WIPO, to see how the rights of theater directors were protected, especially since they already had information that in a number of countries there were copyright protections for theater directors and not just related rights. As a result, they needed to examine the national legislations of WIPO Member States with the protection of performances not fixed in a material form. They also needed to study enforcement practices in the area of the protection of rights of theater directors and their productions. Additionally, they also needed analyze the efficiency of the protection of rights of theater directors and theater productions, in order to evaluate possible mechanisms of international protection for the right holders. In no way was the proposal attempting to affect the market or trample on the interests of other authors or performers. The important thing was that they were

examining the possibility of finding protection for those individuals who had been developing culture in their countries over many centuries. On the basis of the analysis of the points mentioned, they would expect that in the future, in the Committee, they would develop elements of a mechanism for international protection. They had the possibility of creating and setting up an individual protection mechanism or it could be a protocol to the Rome Convention or the WPPT. They could do so very quickly and efficiently. There was an interest in doing that in every country in the world.

305. The Delegation of Senegal stated that it attached great importance to the proposal coming from the Russian Federation. However, it had a few questions in order to better understand the proposal. Was the idea the creation of a completely new treaty, a completely new normative document, or to make changes to existing documents? Additionally, what was causing the problem in the Russian Federation? In many countries the performances were covered by copyright. What was the problem with just covering them through copyright?

306. The Delegation of the Russian Federation stated that the problem was that theater directors did not appear in either the Rome Convention or the WPPT under permissible right holders. That caused a serious problem for theater directors, working for many years, who had absolutely unique ways of creating performances, which were well respected at a very high level within theaters. Theaters gave themselves the right to copy that and the director found that they had no rights. There was not an international legal instrument dealing with that issue. They needed to study the practices in various countries. In certain countries there was such protection, but that was currently only dealt with at the domestic level under copyright and related rights. In 2004 the Russian Federation had codified the legislation, and issues pertaining to intellectual property rights had been included in its civil code. Theater directors were not covered under that either so there was no requirement under international legislations and there was no national legislation covering it. That was the reason it was so important to have a decision on it.

307. The Delegation of the European Union and its Member States reaffirmed that as it had stated in its opening statement, it was not in a position to comment conclusively on the proposal at that stage. However, it would like to echo the questions from the Delegation of Senegal. They had already heard the explanation given by the distinguished Delegate from the Russian Federation. However, a priori it seemed possible to give theater directors the original copyright of authors. How did the Delegation see that qualification of the right?

308. The Delegate of the Russian Federation stated that he was in complete agreement. He had been working in the area of copyright for 20 years. Copyright was something close to his heart. He would probably have put that category of persons under copyright. However, with regard to the issue of how performances were created, it seems that it fell more under related rights rather than copyright. However, that was not the main thing. They needed to look together to see if it should be under related rights or under copyright. The important thing was that somehow or another they obtained protection for those persons.

309. The Delegation of Belarus stated that it support the proposal by the Russian Federation. It would be appropriate to undertake an evaluation of the international experience of the protection of the rights of theater directors with their performances. There was a similar situation in Belarus with regards to the way that rights were protected for theater directors. They were remnants from the Soviet period legislation. Theater directors and producers were not named under international instruments on copyright and related rights. That created a problem at the national level, with regards to achieving a more appropriate instrument, in order to obtain protection for those creators. As a result, the Delegation supported the proposal that it was necessary to study the existing international approaches to protection. That could actually be a starting point for moving forward, to be able to protect the rights of those creators.

310. The Chair asked the Delegations of Argentina, Brazil and Chile to explain the proposal, which had been tabled on broadcasting limitations exceptions to advance discussions. The Delegations should have a copy of that proposal because it had been put online.

311. The Delegation of Brazil stated that the Delegations of Brazil and Chile had joined with the Delegation of Argentina, and under the able guidance of the Delegation of Finland they had discussed possibilities of harmonizing the different views about limitations and exceptions. They had suggested an alternative between those Member States that favored a detailed list of permissible limitations and exceptions and those that preferred a single mention to the three-step test. It had been done as an attempt to find compromise, with the purpose of advancing the discussions in the Committee and to show a spirit of constructiveness. Paragraph 1 corresponded exactly to Paragraphs 1 and 2 in the former working document. In other words, the current Paragraphs 1 and 3 in the proposal were the original paragraphs in the previous version exactly. Paragraph 3 was the three-step test. Compared with the previous version of section C of the working document, the new chapeau of Paragraph 2 provided more leeway to Member States regarding whether and to what extent to implement the following limitations and exceptions. In the previous version, it had been presumed that the following *inter alia*, constituted special cases that did not conflict with the normal exploitation of the broadcast, and did not unreasonably prejudice the legitimate interests of the right holder. They had decided that they would give more comfort to Argentina and to any other Member State concerned with that language, by resorting to something much more in line with Article 15.1 of the Rome Convention. That was an adaptation of the chapeau of Chapter 13 of the Rome Convention. The first four limitations and exceptions, A to D, had come from the Rome Convention of 1961. They had agreed that private use in 1961 was not private use in 2017. As a result, they were going to provide text very shortly to clarify the scope of private use. That was in reference to items A to D. With regard to item E, use to specifically allow access by persons with impaired sight, *et cetera*, was in line with many Member States' national legislations, as well as international norms. Item F was also in line Member States' national legislations and international norms. They had removed item G of the previous version of the proposal. The former proposal had been on the table since 2005, item G was deemed to be too open-ended. As a result, there had been, "any use, of any kind, in any manner or form of any part of a broadcast, where the program or any part of it, which is the subject of the transmission is not protected by copyright or any related right thereto." That had been making many people uncomfortable, and for the sake of constructiveness they had agreed to have it removed. Those changes had been made as an attempt to bridge the gap between different positions in the Committee, to signal a spirit of constructiveness, to move the discussion forward and to hope for further progress in the discussion.

312. The Chair thanked the Delegation of Brazil for having introduced and explained the proposal on behalf of the Delegations of Argentina, Brazil and Chile. During informals and throughout the meeting all three delegations had pushed the discussion forward in a constructive spirit. It was deeply appreciated by all Member States. Although the proposal had not been tabled during the informals, they welcomed the proposals from the parties, and any other parties or any Member States that would like to advance the discussions. He stated that there was an item that the Secretariat wished to share with the Delegations. The document would be distributed to everyone.

313. The Secretariat stated that it could not wait until the very end of the session to present what had been promised since the previous session of the SCCR. Certain Member States had asked during other meetings and missions, if it would be possible to have available, a kind of easy-to-read short brochure that they used when they tried to talk to policymakers who did not understand copyright, and weren't familiar with the notions that it encapsulated. It would help them to take good decisions, which would enable them to participate in the international

copyright system. Following that request, the Secretariat had made a small brochure that would be distributed to the Member States. For the moment, it was only available in English. It was literally hot off the press, having been printed that morning. As a result, they did not have the versions available in other languages. They were ready and translated, but they would be published, printed and sent out in the following days or weeks. The Secretariat wanted to inform the Member States that it had responded to their requests. It hoped that it had been done in a way that met their expectations, with regard to simple language for politicians, parliamentarians and government members. It was a means explain to them the benefits and the challenges that they were aware of in their countries. The Secretariat would be providing the first version of the brochure that day. They had worked on it for a number of hours in a team to ensure that it would be available to the Member States during the current session of the SCCR.

314. The Delegation of the European Union and its Member States thanked the Secretariat for its excellent initiative. It looked forward to discovering that publication, which would be very useful for their communications with the outside world, and indeed for some of them in the room. Returning to the previous point and addressing the methods of work, the Delegation inquired if there were any timelines required for the presentation of proposals, before they could be discussed or presented in the plenary. It seemed rather unusual to receive a proposal one day and have a formal presentation in plenary the next, without them having a full opportunity to consider the presentation or indeed an opportunity to consider their response to the proposal. The Delegation requested that in the future a much more formal process be established for the presentation of proposals, so that they could be fully prepared and provide an adequate, respectful response to initiatives.

315. The Chair stated the proposal was not meant to be discussed that day. It was presented for clarification purposes and was a means for the proponents to introduce the proposal and explain the context behind it. Therefore, it was not his intention to open up a general discussion. The proposal would not be discussed that afternoon. It would only be discussed after the passage of time. Rather than to set a timeline, which would then be subject to a protocol, to which there would always be exceptions, he would rather just present the content. The proposal was something that was relevant to the early part of the week's discussions. It was an attempt to move things along. It was not intended to be discussed. Nevertheless, the Delegation's comments had been well taken. In the interest of trying to move the discussions along, while being efficient, he would bear in mind those comments if there were other similar situations that came up, where they needed to give the Delegates enough time to discuss proposals. However, the proposal was mainly just to introduce the topic.

316. The Delegation of Brazil stated that it fully supported what the Chair had mentioned. There was nothing in the rules of procedures of WIPO that guided their work to have a similar rule that had been mentioned by the Delegation of the European Union and its Member States. The Delegation recalled that the General Assembly had a proposal introduced in the on the mandate of the AGC. The Delegation did not quite agree with what had been said.

317. The Chair stated that Professor Jane Ginsburg from Colombia Law School would be joining them by videoconference to talk about the brainstorming exercise that had occurred in April.

318. The Chair welcomed Professor Ginsburg to the SCCR. He asked if she could quickly introduce and summarize her observations from the exercise, before they opened up the Q&A session.

319. Professor Ginsburg stated that she had been honored to be asked to provide a summary of the meeting of experts convened by WIPO in November of the previous year. The group that



had been assembled was quite broadly representative geographically, and with respect to the various academics views of the desirable strength of copyright, relative to user rights. There had been a very broad representation of views. As was perhaps unsurprising, when a bunch of academics who had a high regard for each other got together, there had been a lot of fairly freewheeling discussions on a variety of subjects. However, the dominant theme of the discussions emerged from or built on the GRULAC proposal of 2015, which the group of experts had been convened to further develop. The GRULAC report expressed considerable concern for the position of authors and performers in the copyright system, including whether or not the copyright system was serving creators, and what was the position of creators in the so-called value chain of the exploitation of copyright works. That concern pre-dominated their discussions. The other guiding theme of their deliberations had been the need for more information. The Committee had the extraordinary report of Guilda Rostama, who had undertaken a survey of the legislation of WIPO Member States. It was a terrific start on the essential question of ascertaining what were the actual facts, with respect to the protection and exploitation of copyrighted works. The group of experts was strongly in agreement that surveying legislation was an essential starting point, but was not sufficient to provide the background information that had to inform any initiatives. Any such initiative so much depended on the laws on the books, but also how those laws were interpreted by courts and administrative agencies, as well as the business practices on the ground. As a result, there was an enormous effort that needed to be done to continue building on the already exceptional work of Guilda Rostama in the initial report, in compiling what was admittedly a vast amount of information. However, if they were to go merely on the laws that were formally on the books, they would not have an accurate picture of what was happening out there with respect to the exploitation of works or equally importantly, the actual position of authors, performers, creators, in the exploitation of copyrighted works. Consequently, that was a principal preoccupation, to be able to acquire the information that would be a prerequisite to any kind of action, whether formal or informal. With respect to concrete suggestions, she referred to the last page of the summary of the meeting, in the English version on page 10. There they had all agreed on three, essentially informational, but helpful suggestions on how to address the problems that the Committee discussed, which had been underscored in the GRULAC report. The first one was actually a little bit distinct. It was the suggestion that the WIPO guide on international treaties could be updated. It had been a while since it had been prepared. A great deal had happened since then. Understanding the Berne Convention and WIPO Internet Treaties in light of new technological and economic developments would be a service to everybody. Not surprisingly, a group of academics would find that a particularly appealing enterprise. Second, the contractual checklist of fair contractual provisions, which could serve as a toolbox for right holders. That should actually say for creators, because they were quite concerned, as was the GRULAC report with the unequal bargaining position of authors and performers. Authors and performers who had more and better information about what their rights were might be in a better bargaining position to resist pressure to give them all away. As a result, they thought that a checklist could be perhaps a small step towards addressing the unequal bargaining position of authors and performers. Finally, the third recommendation, which also picked up on the GRULAC report, in addition to the concern about the unequal bargaining position of creators, was to enhance the means of title searching to find and clear rights. That was really in everybody's interests. The practice of having registries or a means of recording the transfer of rights was by no means universal. The GRULAC report suggested that it would be very helpful to have a kind of universal database. They had not gotten into specifics. They also thought that an easily accessible and consultable means of ascertaining who actually owned the rights in works would make it much easier to transact for rights in those works. They hoped to provide authors further remuneration for contracts transferring rights in their works. That concluded the brief summary of their deliberations.

320. The Chair thanked Professor Ginsburg for her presentation and opened the floor for questions.

321. The Delegation of Brazil stated that it was satisfied with the results that had been reported. Some had mentioned the origin of the work. That was precisely the origin of the Berne Convention, which had generated all those WIPO treaties and frameworks. The professor had also mentioned that three ways of addressing the value gap had been identified by the experts. The Delegation had identified the role of intermediaries, the transparency of contracts and establishing collaboration and trust between right holders and operators. How did she see that transparency could contribute to those three issues to address the value gap? In what ways did she envisage the role of transparency and what could be done at WIPO to deepen the understanding of Member States on that issue?

322. Professor Ginsburg stated that transparency could mean a lot of different things. She asked the Delegate of Brazil to specify what he had meant by transparency in the context of the intermediaries.

323. The Delegation of Brazil stated that they had been constantly stating that the creators, intermediaries and the users of the works, needed to understand the different elements of the value chain. However, from the perspective of an artist, they could understand transparency as being possessing very concrete, clear, user friendly information about how the work was being used and how the work would be remunerated. The intermediaries could also use that information as well, to understand how the payments would be made to them and from them to the artist. That would be their understanding of transparency, and not only with reference to contracts, in which there could be issues of confidentiality, which might not be easily addressed, as they touched upon some civil law aspects. However, transparency with regards to remuneration, on all parts of the value chain, could be one way of addressing that part of the value gap. They had mentioned before that that was a market issue. The players there had different bargaining power. They thought that it was up to artists and the intermediaries to negotiate among themselves, but transparency could be used as a tool to everyone to reduce the friction in the market and to make it function with more efficiency.

324. Professor Ginsburg thanked the Delegate for his clarification. She stated that with regards to transparency at the level of contracts, not every contract was written in language that was easily understandable by the creators. If creators had lawyers or agents, that was great, but not everybody did. As a result, a great number of contracts including, on-line contracts might be written in a somewhat opaque fashion, which then made it difficult for the creator to understand just what it was that he or she was granting. That was one level. As a result, the recommendations that language be written in plain English or plain Portuguese or whatever the relevant language for the creator, was something that could be very helpful at the first step. The Delegate had also mentioned transparency with respect to remuneration. In its proposal for the digital single market, the European Union Commission had recommended that there be an obligation of regular reporting to the authors of how the work had been exploited, what the earnings had been, and what the authors' share of those earnings were. That gave the authors the opportunity to challenge the remuneration, if in fact it was disproportionate with respect to what the author was getting relative to what the exploiter was getting; but of course, the ability to seek or to adjust one's remuneration based on disproportionality, was dependent on having the information that would let one know that the remuneration was disproportionate. Therefore an obligation to have regular royalty statements or reporting of that type also was a transparency objective that would be very helpful to the creative community.

325. The Delegation of the European Union and its Member States stated that it had also wanted to highlight that they had recently proposed legislation, with regards the position of authors, and transparency in contracts between authors and within the industries. As a result, they would be more than happy to give insights in that regard. For the time being, the negotiations between the co-legislators at European Union level was still ongoing. They were not sure what the final provisions would look like. However, it was definitely a topic that was also of interest to them. With regards to the outcome of the brainstorming exercise, they were particularly interested in learning more about the possibility of having a checklist for contracts in that regard.

326. Professor Ginsburg stated that the information gathering exercise would be very important, because it would help them to know what sorts of things authors needed to be forewarned about, with respect to business practices. That was the reason they believed that information gathering couldn't be limited to legislation, or to even case law regulations for that matter. However, it was very important to get as much information as possible about actual business practices, because it was that background, which would help them or whoever prepared this checklist, to know what kinds of questions authors should be asking, and what kinds of demands they should be expecting on the part of their co-contractors.

327. The Representative of Latin Artis observed that amongst the recommendations that had been proposed there were some particularly concerning a checklist. They understood that while it was good to have more information, it did not necessarily give negotiating power in the music sector. In the absence of negotiating power, could a right to remuneration serve as an effective mechanism to provide favorable remuneration to creators in the digital environment? Latin Artis respectfully requested that the Member States continued to keep the item on the Agenda, and that they continued to work on the topic in the Committee.

328. Professor Ginsburg stated that the discussions of the group, with respect to the toolbox were all premised on negotiations with respect to authors' exclusive rights. They had not discussed remuneration rights. She respectfully suggested that information could improve an author's bargaining position. It happened very often that exploiters took advantage of authors' ignorance, and authors were grateful at having a proposed distributor, publisher, record producer and so forth. In their enthusiasm they might sign away more than they actually needed to sign away. Her experience, at least in the United States, had been that very often, when authors and performers understood what rights they had, and were prepared to ask questions about whether the exploiter really needed everything they were demanding, exploiters actually tended to back down, to a greater extent than one might expect. Consequently, information was power. That was the reason it was very important for authors and performers to be informed about their rights.

329. The Representative of Asociación Argentina de Intérpretes (AADI) stated that since the beginning, it had supported the GRULAC document that the professor had referred to. It was increasingly important, as there were threats that would prejudice artists and performers in the digital world. One of the topics that the professor had mentioned was the compilation of standards, which did not necessarily lead to a solution. That obviously depended on the interpretation that courts made of those standards and laws. That was of concern to them, because in an artificial ecosystem such as the one they were discussing, musical performers were often the most excluded parties, because they were not recognized. There was public communication, and even in that public communication there was a right to remuneration for performers. Did the professor believe that the compilation and the framework that she had mentioned the Committee would be working on, re-updating all the standards and norms, could partly solve the issues? The various treaties have different definitions. The right to remuneration for performers was not an issue of technology. It should always be respected by the industry and also by users. Would that first compilation by WIPO of the standards solve the

problem, or would a lot still depend on the interpretations in every country?

330. Professor Ginsburg stated that it was extremely important to continue all efforts to assist performers and authors at the national level, independently of anything that WIPO did. As for solutions, as the summary of the experts committee had indicated, they were all very concerned about the need to proceed cautiously. They could not begin to propose solutions, at least not anything concrete, until they understood the full scope of the problem. However, to understand the full scope of the problem, they needed a lot more information than they actually had. It was probably not all that helpful to make recommendations at an extremely high level of abstraction, which at that point, was probably where they were, given the lack of concrete information. Consequently, the more they knew, the better they understood the problem. Any proposed solutions could be suggested in light of a fuller and more nuanced understanding of the problem.

331. The Representative of the International Confederation of Societies of Authors and Composers (CISAC) stated that they were discussing very essential topics, with regards to focusing their debates towards the future of copyright in the digital environment. The Representative focused on two questions, which the professor had mentioned and which CISAC thought were very important. One was updating the guide, which interpreted the WIPO treaties on copyright, the second one was related to the transfer of value and the responsibility for that. Those were key topics for reviewing the situation that copyright holders had in exercising their rights. Those were the two key topics on which to focus their discussions. Could the professor further elaborate on the conclusions of the group, with regards to clarification of the rights on the Internet, and in relation to those platforms or new players, which were often protected by legislation?

332. Professor Ginsburg stated that with respect to the WIPO guide, they would need to undertake a thorough review of each of the articles, in light of recent developments, to ascertain where there were ambiguities that might have arisen, as a result of new technological or business developments. Then they would have to address what was the most effective way to explore and resolve those ambiguities. Consequently, that would be largely a work for a group of academics, in order to end up with fairly clear guidelines, as to understanding the provisions of the Berne Convention and the WIPO treaties. With respect to authors' rights in digital environment and exploitations in digital media, there were a range of issues, as a number of the Delegates had already indicated. A great concern expressed in the GRULAC report, that preoccupied the experts, was the means to ensure that authors and creators participated in the revenues generated by those new digital forms of exploitation, including on platforms. It was her understanding, for example, that the collective management organizations had been licensing YouTube for the public performance rights in music. It was also her understanding, at least with respect to the CMOs in the United States, that the exact terms of those licenses were not disclosed. However, it was obviously a positive development that licensing was now happening, compared to some resistance on the part of the platforms in the past. Of course, there was the important development of mechanisms to identify the content that was uploaded to those platforms, and to authorize the uploads or decline to authorize the uploads, and if authorized, to provide for a revenue sharing of the advertising that the platform carried. It was equally important in the event of revenue sharing to ensure that it was not just the licensor, the publisher, or the commercial intermediary who had obtained a transfer of rights from the authors, who shared in that revenue. The authors share in the revenue that evolved to the intermediaries as a result of their agreements with the platforms was also important.

333. The Representative of Corporación Latinoamericana de Investigación de la Propiedad Intelectual para el Desarrollo (Corporation INNOVARTE) observed that in the suggestions, there was a reference to collective management. Most believed that collective management was very essential in the digital environment, especially in a global world. What issues should be

addressed to improve the system? They had seen that there were some problems with regards to how difficult it was to get an international license from one country to another. Sometimes they might also see issues related to distribution, as well as other types of problems. What would be the professor's recommendation on how they could improve the system of collective management to better serve the needs of authors and artists?

334. Professor Ginsburg stated that the specifics of the question were beyond the issues addressed by the group of experts. There had been measures, for example in the European Union, with respect to the conduct of business by collective management organizations. However, they had not really addressed that, so she was unable to address the question in any more detail.

335. The Representative of the International Federation of Journalists (IFJ) stated that it very much welcomed the interventions by the Delegation of Brazil on transparency, and that of the European Union with regards to the elements of the draft directive on that issue. The Representative observed that from his experience as an author, exploiters frequently did not understand the contracts which they offered or presented as take it or leave it. When those that were agile and flexible were asked what rights they needed, they frequently reconsidered. Transparency could therefore help several players in the value chain to achieve the most efficient contracts. The IFJ looked forward to further discussions on that topic, and on issues beyond it in the value chain. Was the professor prepared or interested in reporting further on the means for authors and performers to challenge those contracts that were opaque or unfair?

336. Professor Ginsburg stated that the Representative's point that publishers themselves did not always know the reason behind some of those clauses included in the contracts. As a result, better information and dialogue could actually have a very positive effect. There was a lot of legacy clauses in contracts that might have made sense some time ago, but did not make a whole lot of sense presently.

337. The Chair thanked Professor Ginsburg for her presentation. They had benefited a lot from her presence at the experts brainstorming seminar the previous year. They thanked her for sharing her views on the seminars with them, as well as answering the questions that were posed to her during the Q&A session.

338. The Chair returned to Agenda Item 8. They had spent the day listening to various presentations. There had been questions and answers, exchanges and discussions. He wanted to discuss the future of the different topics under Agenda Item 8 with the Member States. He asked regional coordinators and Member States to express their views on whether copyright in the digital environment, and artists' resale rights should be put on the main agenda. However, the question was posed less so for the proposal by the Russian Federation. He had heard divergent views in the room on those topics. Was there any appetite at that point in time to put any of those topics on to the regular agenda? The other question was what follow-up activities would they like the Secretariat to conduct with regard to those three items? In other words, the proposals on copyright in the digital environment, artists' resale rights and theater directors' rights. He had spoken briefly with the Secretariat about those matters and they had some ideas. However, at that point it was useful to hear the views of the Member States before the Summary was drafted.

339. The Delegation of Burkina Faso stated that it covered the artist resale right in its law, but it had not yet been enacted. For them, it was an instrument of equity for many graphic artists as well as other artists and creators. It shared wealth. As a result, Burkina Faso supported putting that topic on the Agenda of the following session of the SCCR.

340. The Delegation of Kenya stated that it supported the proposal by Senegal and Congo on the issue of resale rights. Kenya was currently in the process of amending its law. It had made provisions for such rights, and was looking forward to seeing how they were going to have them implemented.

341. The Delegation of Brazil stated that as it had mentioned before, copyright in the digital environment was a specific agenda item. They had heard Member States express their continuous interest in the matter. They had also heard the observers and those representing the members of the industry and the artists - the individuals who were most interested in the topic - mention that they wanted the discussions to continue. Consequently, having a specific agenda item for that topic would not affect the timetable for the following session. It would not affect the discussion of the other agenda items, which were also very important. Finally, it would help them to have a more structured discussion regarding the digital environment.

342. The Delegation of Japan stated that they already had many agenda items. As a result, the Broadcasting Treaty had priority in the discussions in the SCCR. The agenda item that should be given priority was an important issue for all Member States. They needed more time to discuss priority items. However, they also had to discuss the Chair's summary, and, as a result, they should not make their decision in a hurry, with regards to which agenda item was to be given the priority at the moment.

343. The Delegation of the European Union and its Member States stated that it supported the addition of artists' resale right as a new agenda item in the SCCR for two reasons. The first one had already been mentioned in its opening statement. That proposal took historical precedence because it had been introduced for the first time during SCCR 27, and had been tabled at SCCR 31. With regards to the proposal on copyright in the digital environment, they first needed to better understand what they wanted to discuss, or which topics were actually being proposed. For those reasons, the Delegation gave its support to the proposal on the resale right.

344. The Delegation of Malawi stated that Malawi had revised its copyright law in 2016. There was a new law, which included the resale right. As a result, the Delegation strongly supported the proposal for the topic to become a new item in the Agenda of the SCCR, which would benefit its country.

345. The Delegation of the United States of America thought that the discussion with Professor Ginsburg had been enormously interesting, with respect to copyright in the digital age. It had underscored that there was a great deal more of internal thinking that they needed to do, with respect to which particular topics would be most conducive to a productive exchange of views. It would come prepared at the following session to participate in such a discussion under "Other Matters." With respect to the resale royalty right, that would also be an interesting and substantive discussion. However, it could be accommodated at that time under "Other Matters."

346. The Delegation of Botswana reiterated that it supported the inclusion of the resale right as a standing agenda item of the Committee.

347. The Delegation of Senegal stated that it gave its very strong support to Brazil's proposal on copyright in the digital environment. It had carried out a very careful reading of Brazil's text. All the matters raised had always been raised by performance artists, at least in Africa, and many of the questions had no answers at the moment. As a result, the questions asked by Brazil were very relevant. The Delegation would like to deal with them carefully. It was therefore in favor of continuing the discussions on that item. Regarding the resale right, it thanked all the Member States for their attention to that problem. It respected the caution that had been expressed by certain Member States. However, it noticed that no country had

expressed hostility towards that item. Its wish was to further develop the discussions and to put the topic on the Agenda as a standing item. However, if that was not possible, in order to respect certain Member States, it should at least be maintained under “Other Matters” and examined. They could discuss an action plan with the Secretariat or the other Member States. It had followed with great interest the proposal by the Russian Federation. However, some things remained unclear in the proposal. For the moment, the resale right and the item proposed by the Delegation of Brazil were the priority items.

348. The Delegation of Côte d'Ivoire recognized the relevance of all the items they were presently discussing. However, its preference went to the resale right, given the fact that it had been brought up a long time before any of the others.

349. The Delegation of the Russian Federation supported including all the matters that were being discussed on the Agenda. They were all very important for the development of copyright as a whole throughout the world. That included the resale right, copyright in the digital environment, and its own proposal, which was very important for the development of culture. Nevertheless, the Delegation supported once again, the proposal by the Japanese Delegation that the Treaty on broadcasting organizations should be a priority for the Committee.

350. The Delegation of Indonesia stated that its Delegation had been following all the issues under “Other Matters” with interest. It supported all of the discussion regarding all the issues under Agenda Item 8. However, it was very interested in knowing what had been the Chair's discussion with the Secretariat, regarding ideas on how to move forward the matters under that agenda item. Was he able to share that with them?

351. The Chair stated that he had discussed what could be done with the Secretariat. He had sensed that although there were Member States that wanted to put copyright in the digital environment as a separate agenda item, as well as the artist resale rights, there was no consensus in the room on that. However, everyone agreed that those topics could be maintained under Agenda Item 8, as “Other Matters.” With regards to the proposal made by the Russian Federation, many Member States had expressed their interest. However, many colleagues still wanted to check back with capitals, to further study the proposal. However, the Delegation's priority was also the broadcasting Treaty, like Japan. In anticipation of that, he had asked the Secretariat what could be done in terms of activities. He had not used the words “action plan” because presently that word was fraught with a lot of meaning. As a result, he had used the word “activities.” After having spent a bit of time with the Secretariat, there were things that they would suggest for consideration. They would need Member States to provide guidance and directions on those suggestions. First, under copyright in the digital environment, Dr. Rostama had put together a lot of information. Dr. Ginsburg had said and had made an appeal that more information was needed. Perhaps one way to take the work forward, was to ask Member States whether there were any particular items within that topic that required further study, or whether they wanted to synthesize the results of Dr. Rostama's study in any way. As to how it was to be synthesized, they were in the good hands of the Member States. Perhaps, the Member States of GRULAC had a clear idea of what elements could be further studied or synthesized, because it was a broad topic. The digital environment cut across almost every other thing. With regards to artists' resale rights, they had discussed the possibility that the studies showed that there was a lot of data in relation to the European markets, especially with regards to the introduction of resale rights in the context of the United Kingdom. The professor had done a study in the context of the United States of America. However, they were wondering whether they could go into detail and what was the role of CMOs in the art market. If the Member States thought it could be possible, the Secretariat could go into in some detail, or do a study on that, which might be useful. With regards to the proposal by the Russian Federation, there had been some preliminary discussions. The Secretariat was open to doing a scoping study, since it was a new topic. That would allow them to discover the issues, as well

as the countries that had implemented that right and to what extent. The topic seemed to be very relevant for countries within a certain geography. However, it was not clear how relevant it was for countries around the world. Those were some of the preliminary views however, he welcomed other ideas.

352. The Secretariat stated that with regards to a follow-up to the study that they had asked Dr. Rostama to conduct, three recommendations had been produced. Professor Ginsburg had repeated that they could not cover everything, because they were very difficult subjects. They could not deduce everything from the laws that had been adopted in Member States, or from treaties adopted. However, it was very interesting to see how those laws were interpreted, as there might be differences in interpretations, which might lead to certain situations. One example, pertained to international exchanges, or activities at the international level, which were of interest to WIPO. Dr. Rostama could perhaps highlight the different interpretations from one region to another or one country to another. That could be an area for study, or reflection. Professor Ginsburg had mentioned that the study of economic models in those new and emerging sectors could also provide a lot of information. That could be complemented by the work of a small team. It did not necessarily have to be carried out by a law professor. They could enlarge the team - not to the level of a brainstorming session - to see whether they could cover some of those different areas. Additionally, there were the ideas suggested by Professor Ginsburg, which could be found at the end of the brainstorming paper under the conclusions. That referred to an updated guide to the treaties, in light of new technologies. If the Member States thought that was something interesting, they could do that, without it becoming a part of the SCCR's work. However, if the Member States thought that it would be a useful feed-in to the SCCR's work, then they could start the work on that fairly quickly. With regards to the resale right, with the Chair, they had discussed one of the things that had been stated by Professor Farchy at the end of her presentation. She had stated that the resale right was recognized in about 80 countries. With regards to an international system for the resale right, there were a lot of things to be thought about first. However, it was a subject of interest to many of them. As she had said, it was clear that the implementation of that right at the national level, in terms of the infrastructure that would have to be established, would be quite onerous. They were prepared to start their work to examine what would be needed in each country, in terms of infrastructure that would permit international traceability, when works of art were sold and bought. With regards to the proposal from the Russian Federation, they were prepared to carry out that study if the Delegation of the Russian Federation and the Member States thought that was something interesting and useful. They could suggest somebody or a group of academics or professionals to look into that. They could produce a study, which of course would be an exploratory scoping study at that stage.

353. The Delegation of Indonesia thanked the Chair and the Secretariat for having come up with very excellent initiatives. The Delegation always supported initiatives because it saw all items under discussion in the SCCR as being equally important, including all agenda items under "Other Matters." It would be interested to learn more about a mechanism for international traceability, infrastructure for resale rights, as well as synthesizing Dr. Rostama's work as a way to move forward. They were all good initiatives. They were ready to support them if they could go into informals and talk about the next step. The Delegation was very eager and interested to talk about them. However, in the light of discussions that week, it had seen that that even a proposal that was presented a week before the meetings could not be supported; perhaps they could also include synthesizing Dr. Rostama's work. They could study topology work in the same study as well. If they could go to informals, they would be able to decide how to move forward on those important issue.



354. The Chair noted that the Delegation had mentioned informals. The key thing was that, unlike textual proposals or policy proposals, they were suggesting activities to the Member States. They were not going to be as controversial as some of the other topics. He believed they could have a good discussion in informals.

355. The Delegation of Brazil thanked the Chair for his creative suggestions. With regards to copyright in the digital environment, if they checked the GRULAC paper, they would see that they were not proposing to change the law or international treaties. They wanted to have a discussion on what Member States and stakeholders alike were dealing with. That was an area that was very dynamic with a lot of changes. In order to contribute to illuminating their discussions, they suggested, without prejudice to the suggestions of the Secretariat, conducting an economic study regarding the value chain of the contents that were in the digital environment. WIPO also had a Chief Economist, who had a good professional team and perhaps the study could be done inhouse. That would also contribute to guiding their discussions in the SCCR.

356. The Chair stated that it was not very clear what exactly the Delegation had requested. Were they asking for an economic analysis of copyright value chains? As someone who regulated copyright in his home country, he observed that that was a very broad topic. The copyright value chain was hundreds of billions of dollars.

357. The Delegation of Brazil stated that it recognized that as well, as a country that produced it. However, starting from a more general level they could focus on specific items. Maybe it could be that the audiovisual sector was different from the music industry and so on. They could go into the specifics. However, the digital environment itself had some particularities which could be initially addressed.

358. The Chair stated that he preferred to meet with regional coordinators than to move to full informals. Moving to full informals to discuss activities was not the right way to proceed. He would let the regional coordinators take some time to consult with their Member States. Once they met, he would talk to regional coordinators about the work ahead and possible future activities. They would then return to the plenary to sort things out and then move on to the Chair's Summary.

359. The Chair reopened the proceedings in the plenary. He stated that he had just finished the meeting with the regional coordinators and they were not able to come to a consensus on the activities under Agenda Item 8 in the discussions. They had decided that instead, they would request the Chair to propose a set of suggested activities under Agenda Item 8 for consideration by the Committee at the following session of the SCCR. In response to one of the regional coordinators, after the meeting was over, he would circulate that document one month before the following SCCR. He closed Agenda Item 8.

## **AGENDA ITEM 9: CLOSING OF THE SESSION**

360. The Chair opened the last agenda item, the Closing of the Session. He stated that along with his Vice-Chairs, they were very grateful for the chance to chair for the thirty-fifth session of the SCCR. In relation to the discussions on broadcasting, they had made some headway on the technical issues using the informal sessions. That continued to be a useful way to discuss those very detailed and complicated issues. With regards to the issues on limitations and exceptions, the Secretariat had done a stellar job bringing onboard many different speakers to present, who had given them much food for thought. He thanked the speakers who had contributed very richly to their discussions. He also thanked the Member States that had put forward different proposals and suggestions to advance the work of the Committee. As always, they welcomed fresh proposals from Member States because that helped to keep the Agenda

alive and fresh. He also thanked many of the unseen heroes who had been working very hard behind the scenes to make the meeting a success. First, he thanked the interpreters. It was amazing that they had stayed with them throughout the entire session, interpreting for all the Member States. He also thanked the conference services colleagues who had prepared their coffee, and ran around distributing documents. They did all the hard work behind the scenes. They were the real fixtures of the SCCR, apart from the text that had been on the table for 20 years. It went without saying that the Secretariat continued to be the foundation of a lot of the work there. The Member States had given them a challenging task in the previous round to prepare draft action plans, without much guidance. They had tried their best to put together something that could be used by the Committee. Even though they could not agree on the action plans during that round, everyone had made very strong comments expressing gratitude for them, and encouragement. They had also asserted that they were an extremely good basis for further discussions. Beyond the intersessional work, the Secretariat had been great in its support. They had been giving a lot of energy to the discussions. On behalf of all the Member States he expressed their very warm gratitude to every member of the Secretariat, who had worked in every way possible to help the meeting run smoothly, on time, and to provide them with all the documents and information they needed to have a good session.

361. The Secretariat expressed its heartfelt gratitude for all the support the Chair had given them and the energy he had brought to all of the work they had carried out. Although things were difficult at that moment, it would have hoped to have a greater number of positive results. Nevertheless thanks to the Chair's optimism and positive outlook, they would have worked very hard, forging ahead to fulfill everybody's needs.

362. The Chair thanked his fellow colleagues in the Committee, as well as the observers for always being there in the spirit of respect, in the spirit of constructivism, and in the spirit of wanting to have a good discussion. They may not have agreed on as many things as some of them would have liked to, but the spirit in which they conducted the meetings was something that they should never lose. He looked forward to the following meeting with all of them. He inquired whether any Delegations wished to make brief statements, and opened the floor for regional coordinators and Member States to make any comments.

363. The Delegation of Indonesia speaking on behalf of the Asia and Pacific Group thanked the Chair and his Vice-Chairs for their leadership in guiding the meeting toward a very successful conclusion. The Asia and Pacific Group remained committed to the work and importance of the Committee. It had noted the excellent discussions during the session, with regards to the protection of broadcasting organizations. It welcomed the new version of the Revised Consolidated Text on Definitions, Object of Protection, and Rights to be Granted, as well as other issues. It welcomed the Chair's Summary, included in Document SCCR/35/11, which had reflected a very good understanding of the state of the discussion. The Asia and Pacific Group had also taken note of the joint proposal tabled by Argentina, Brazil, and Chile on limitations and exceptions with regards to broadcasting. With regards to Agenda Item 6 and Agenda Item 7, it thanked the Secretariat for coming up with the Draft Action Plans. It was a very good basis for further considerations. It also thanked all the Member States for allowing them to have some time to discuss those action plans. While the Committee was unable to move forward with the action plans, it remained positive that they would have action plans on exceptions and limitations during the following session of the SCCR. With regards to Agenda Item 8, Other Matters, it maintained its belief that all issues were of importance for the members of the Asia and Pacific Group. It remained open to discussions to make progress on all the items under "Other Matters." They might not have been able to make a lot of progress during the session, but the Asia and Pacific Group remained committed to continuing to engage constructively, so that they could make progress on all the agenda items. No matter how slow it had been, they remained optimistic that progress would be made in the future sessions of the Committee. It thanked all regional groups, regional coordinators, Member States and observers for all of the

positive contributions to the discussions in the Committee. It also thanked the Secretariat for its excellent work in all the preparations and the execution of the meeting. That included conference services and the interpreters.

364. The Delegation of Georgia speaking on behalf of CEBS thanked the Chair for his skillful guidance during the work of the Committee, which had not been an easy task. The Delegation had observed his professionalism in guiding the Committee towards progress. In the same vein, it expressed gratitude to the Vice-Chairs. It had also taken note of the extremely efficient efforts of the Secretariat and the DDG. They had invested in the advancement of the work of the Committee. The Delegation also thanked the Member States and all regional coordinators for their constructive and efficient deliberations during the week's hard work. It also thanked the skillful interpreters for their professionalism. It reiterated the importance that its Group attached to the conclusion of the Treaty on the protection of broadcasting organizations. It remained optimistic to further advancing the work towards developing an effective and efficient legal instrument. It commended both the Chair and the Secretariat for having drafted the Summary by the Chair, and looked forward to the following session, to address the agenda items in the same constructive spirit.

365. The Delegation of Costa Rica speaking on behalf of GRULAC expressed its thanks for all the work that the Chair had put in during the course of the session. His skillful leadership had enabled them to make headway in their discussions and they were very grateful for that. It also extended its gratitude to the Secretariat and the Vice Chairmen for their work, and thanked the regional groups for their flexibility. GRULAC also thanked the interpreters for their support. It hoped that they would be able to continue their work on all of the topics, during the following session of the SCCR, as indicated in the Chair's Summary. The same applied to the proposals tabled, as well as the initiatives taken by Member States.

366. The Delegation of China thanked all the Member States. With their joint efforts, every topic had been deeply discussed. With regards to the protection of broadcasting organizations, there was now less divergence. It hoped that on the basis of the current text they would be able to achieve concrete results during the following session. Although they had not agreed on a Draft Working Plan, the current text would allow them to make progress on the work on limitations and exceptions.

367. The Delegation of Senegal speaking on behalf of the African Group expressed its deep appreciation for the practical and efficient way in which the Chair had led the work of the Committee. It was grateful to the Secretariat for its assistance, for the documents, and for providing them with helpful and useful information throughout the course of the session. It was also grateful to the experts who had come to make presentations during the session. Their contributions would be of assistance to them as their work continued. They were grateful for the Q&A sessions, which followed the presentations. On the issue of the protection of broadcasting associations, it hoped that the negotiations would come to a successful conclusion and the convening of a diplomatic conference would take place as soon as possible, in accordance with the mandate given to them in 2007. On exceptions and limitations, it was grateful to the Secretariat for having prepared the relevant action plans. It hoped that in the very near future, those action plans would be able to be used as a basis for achieving their common objective, which was the implementation of the mandate given to them in 2007. Under "Other Matters", the African Group awaited with interest the proposals for activities, which would be submitted in time for the following session of the Committee. It hoped that the work would be continued on all topics in the future, in the same constructive spirit that had prevailed during the session.

368. The Delegation of Switzerland speaking on behalf of Group B, thanked the Chair for his leadership and dedicated guidance, and as a Swiss, for his very efficient time management. It also thanked the Vice-Chairs, the Secretariat, and the interpreters for their hard work. Group B looked forward to seeing the Chair at the following SCCR session, and assured him that he would be able to count on their continued commitment and constructive engagement to the work of the Committee.

369. The Delegation of the European Union and its Member States thanked the Chair, the Vice-Chairs, and the Secretariat for the efforts that had been made to prepare the session. They thanked the Chair for his skillful guidance, with regards to the work of the Committee. It congratulated the Chair on the progress that had been made, with regards to the discussions on the Treaty on the protection of broadcasting organizations. It highlighted once more the importance that it attached to the artist resale right, and it was grateful for the presentation given by Professor Farchy in that regard. It also thanked the interpreters for the fine interpretations during the informals and in the plenary.

370. The Delegation of Egypt thanked the Chair for all his hard work and for the very efficient and sensible way in which he had chaired the work of the Committee. The ideas which had been brought forward were innovative, and the Delegation was sure they would lead to positive results. It thanked the Secretariat for the preparation of the documents as well. Unfortunately, despite the work they had done that week, the outcome had not been really what they might have expected, particularly with regards to exceptions and limitations for libraries and archives. It was essential to deal with that subject in a more constructive way, and the Delegation hoped that would be the case at the following session. They also needed to have a better balance in the discussion between all the points that they were dealing with.

371. The Delegation of Brazil aligned itself with the statement of Costa Rica made on behalf of GRULAC. It thanked the Deputy Director General, as well as the Chair, the Vice-Chairs, and the Secretariat for their efforts in preparing a dense session, backed up by high-quality materials and scholarly contributions. It also thanked the interpreters, and thanked the SCCR for the support given to its side event. It was grateful to all those who had honored them with their presence. It especially thanked their partner in that initiative, the American University College of Law, Program on Information Justice and Intellectual Property. During the session, under the Chair's able guidance, Brazil had attempted to create common ground with different groups of countries, taking everyone's concerns and interests into account. As always, it had been open to dialogue with observers representing different stakeholders. In every issue under discussion, such as broadcasting, limitations and exceptions, the digital environment, the resale rights, and theatrical works, it had attempted to bridge gaps and find solutions to ensure the proper balance between the legitimate rights of creators, authors, and other stakeholders on the one hand, and of users and the public interest on the other. It believed that with creativity, goodwill, and the spirit of compromise, it was possible to reach solutions to the most contentious issues. Brazil would continue working in that spirit, always mindful that WIPO was a member-driven organization, as well as a United Nations agency. In particular, it reaffirmed its commitment to progress in the matter of broadcasting. It noted with satisfaction the remarkable progress made in the drafting of the text during the session. Its joint proposal with Argentina and Chile on limitations and exceptions was an attempt to bridge gaps between Member States, and would hopefully facilitate consensus on the subject. Brazil would continue to contribute to reach a balanced solution, that would deal effectively with the serious issue of signal theft, and would allow the Committee to recommend to the General Assembly the convening of a diplomatic conference as soon as feasible. With regard to copyright in the digital environment, it recalled that the main purpose of the GRULAC proposal was to raise awareness on issues of serious concerns that required their close attention. It did not prejudge the results, which would, of course, come out of a consensus among Member States. It reiterated its understanding that the scoping study presented in the session and the results of the brainstorming exercise among

experts were initial steps in an ongoing effort to understand the issue in all its complexity. Thus far, it had raised tremendous interest on the part of many countries and a wide variety of stakeholders. The Delegation expected discussions to continue during the following sessions. It expected a Draft Action Plan on limitations and exceptions to be adopted soon. It was common knowledge that it viewed limitations and exceptions as a way to contribute to a vigorous and sustainable copyright system. The Delegation thanked all the Member States for their patience and spirit of dialogue.

372. The Delegation of Senegal expressed its gratitude to the Secretariat and to the Chair for his outstanding work. It was very grateful for that and for all those who had given him support throughout the course of the session. On the issue of protecting broadcasting organizations, it was of the opinion that they had made progress in the course of the session. Some headway had been made. They hoped to be able to make quite a bit more progress towards the convening of a diplomatic conference, even if that meant organizing a special session on the issue of broadcasting. With regards to limitations and exceptions, it was of the opinion that balance was needed between being too lax and being too rigid. Obviously, it was difficult to keep a balance between those two things, but they would be able to find the balance if they moved with determination and caution. With regards to “Other Matters”, as the Delegation had said before it shared the concerns expressed by GRULAC. On the question of the resale right, it would accept the consensus, which had been reached during the session. On the matter raised by the Russian Federation, regarding international protection of theater directors' rights, it was open to further discussion and to learning more about the concerns.

373. The Delegation of the United States of America thanked the Chair for his leadership during the week. It had been a pleasure to work with him. The Delegation also thanked the Deputy Director and her extraordinary team for the preparations for the meeting. Things had gone well, and it appreciated that. It had enjoyed the rich exchange of views on a broad range of topics that week, and it looked forward to continuing the conversation in May 2018 or whenever the following meeting of the SCCR would take place.

374. The Chair closed the meeting.

[Annex follows]

## **ANNEXE/ANNEX**

### **I. MEMBRES/MEMBERS**

#### **AFRIQUE DU SUD/SOUTH AFRICA**

Lloyd MATSEEMBI (Mr.), Legal Support Copyright, Companies and Intellectual Property Commission, Department of Trade and Industry, Tshwane

#### **ALGÉRIE/ALGERIA**

Sami BENCHEIKH EL HOCINE (M.), directeur général, Office national des droits d'auteur et droits voisins (ONDA), Ministère de la culture, Alger

Fayssal ALLEK (M.), premier secrétaire, Mission permanente, Genève

#### **ALLEMAGNE/GERMANY**

Jan POEPEL (Mr.), German Patent and Trade Mark Office (DPMA), Munich

Matthias SCHMID (Mr.), Head, Division of Copyright and Publishing Law, Federal Ministry of Justice and Consumer Protection, Berlin

Christina WIPPERMANN (Ms.), Trainee, Economic Affairs, Permanent Mission, Geneva

#### **ARABIE SAOUDITE/SAUDI ARABIA**

Emad ABUALAMAHA (Mr.), Manager, Ministry of Culture Information, Makkah

#### **ARGENTINE/ARGENTINA**

Gustavo SCHÖTZ (Sr.), Director, Dirección Nacional del Derecho de Autor, Ministerio de Justicia y Derechos Humanos, Buenos Aires

María Inés RODRÍGUEZ (Sra.), Ministra, Misión Permanente, Ginebra

Nicolás NOVOA (Sr.), Experto, Dirección Nacional del Derecho de Autor, Ministerio de Justicia y Derechos Humanos de la Nación, Buenos Aires,

#### **ARMÉNIE/ARMENIA**

Kristine HAMBARYAN (Ms.), Head, State Register Department, Intellectual Property Agency, Yerevan

#### **AUSTRALIE/AUSTRALIA**

Kirsti HAIPOLA (Ms.), Director, Content and Copyright Branch, Department of Communications and the Arts, Canberra

AUTRICHE/AUSTRIA

Charline VAN DER BEEK (Ms.), Attaché, Permanent Mission, Geneva

BAHAMAS

Bernadette BUTLER (Ms.), Minister-Counsellor, Permanent Mission, Geneva

BARBADE/BARBADOS

Dwayne INNIS (Mr.), First Secretary, Permanent Mission, Geneva

BÉLARUS/BELARUS

Aleksei BICHURIN (Mr.), Head, Copyright Collective Management Department, National Center of Intellectual Property (NCIP), Minsk

BÉNIN/BENIN

Chite Flavien AHOVE (M.), conseiller, Mission permanente, Genève

BHOUTAN/BHUTAN

Tshering TENZIN (Mr.), Legal Officer, Copyright Division, Department of Intellectual Property, Ministry of Economic Affairs, Thimphu

BOTSWANA

Keitseng Nkah MONYATSI (Ms.), Copyright Administrator, Copyright Department, Companies and Intellectual Property Authority, Gaborone

BRÉSIL/BRAZIL

Daniel PINTO (Mr.), Counselor, Intellectual Property Division, Foreign Ministry, Brasilia

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\* Sur une décision du Comité permanent, la Communauté européenne a obtenu le statut de membre sans droit de vote.

\* Based on a decision of the Standing Committee, the European Community was accorded member status without a right to vote.

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